



**KANSAS**  
**DEPARTMENT OF HEALTH & ENVIRONMENT**  
**DIVISION OF ENVIRONMENT**  
**BUREAU OF WATER**

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Kansas Public Water Supply Loan Fund  
Policy Memorandum  
February 2004

FROM: Karl Mueldener, P.E.  
Director, Bureau of Water

SUBJECT: Kansas Public Water Supply Loan Fund -  
Procurement Procedures

PURPOSE: To present Department Policy and help clarify the Federal, State, and Local requirements relating to procurement of goods and services in the Kansas Public Water Supply Loan Fund Program.

BACKGROUND: The Safe Drinking Water Act (SDWA ) Amendments of 1996 (Pub. L. 104-182) authorize a Drinking Water State Revolving Fund ( DWSRF) to assist public water system to finance the costs of infrastructure needed to achieve oar maintain compliance with SDWA requirements and to protect public health objectives of the Act. This Act and the EPA "Final Initial Guidance" dated February 1997 imposed several EPA program requirements related to procurement and construction activities on the SRF projects. The Across-cutting" Federal Legislation applicable to any Federally funded program impose several requirements as well. The Kansas Public Water Supply Loan Fund (KPWSF) legislation passed in 1994 (K.S.A. 1996 Supp. 65-163d through 65-163u), implementing Administrative Regulations K.A.R. 28-15-50 through 28-15-65, and other existing State Laws and regulations related to procurement and construction activities also impose several requirements on the SRF. Specifically, K.A.R. 28-15-60 (attached as Appendix A) requires projects follow applicable State procurement laws and regulations, and gives the Secretary of KDHE the authority to establish procurement procedures. These requirements may change from time to time as Federal and State Legislation is enacted, and this Policy Memorandum will be revised accordingly.

POLICY AND REQUIREMENTS: It shall be the policy of KDHE to impose procurement procedures and requirements on SRF projects as presented in this document. The policy memo is arranged by subject to ease updating.

Subject

- I. Engineering/Architectural Services
- II. Force Account
- III. Construction Projects
- IV. Small Purchases
- V. Recipient Appeals

Attachments

Appendix A	K.A.R. 28-15-50 through K.A.R. 28-15-65
Appendix B-1	KCE Procedure
Appendix B-2	K.S.A. 75-5801 through 5807
Appendix C-1	40 CFR Part 32 Certification Form
Appendix C-2	40 CFR Part 32 Regulations
Appendix D-1	SBRA Implementation Procedures
Appendix D-2	SBRA Utilization Worksheet
Appendix D-3	Applicant Assurance form for SBRA Utilization
Appendix E-1	KPWSLF DBE Information Sheet
Appendix E-2	40 CFR Part 31.36(e)
Appendix E-3	MBE/WBE Region VII Procedure for Implementation
Appendix E-4	MBE/WBE Utilization Worksheet
Appendix E-5	Applicant Assurance form for MBE/WBE (DBE) Utilization
Appendix E-6	MBE/Worksheet Standard Form 5700-52A (5/96) and Instructions
Appendix F-1	Specification Review Checklist - Construction
Appendix F-2	Specification Review Checklist - Equipment
Appendix F-3	SRF Project Construction Contract Assurances
Appendix F-4	Certification of Nonsegregated Facilities
Appendix F-5	Executive Order 11246 Clause, Notice, Specifications
Appendix G-1	Kansas Act Against Discrimination Contract Provisions
Appendix G-2	Act Against Discrimination Contractor and Applicant Assurance Form
Appendix H-1	KDHE Bid Document Review and Approval Checklist
Appendix H-2	Certificate as to Title to Project Site
Appendix H-3	Applicant Assurance with Respect to Acquisition of Real Property

I. Engineering/Architectural Services -

- A. There are no KDHE procurement regulations or required procedures for selecting engineering/architectural services. The loan recipient should use locally established procedures. KDHE suggests the procedures as recommended by the Kansas Consulting Engineers or similar to K.S.A. 75-5801 thru 5807 (attached as Appendices B-1 and B-2) be considered.
- B. KDHE will review engineering contracts for scope only. The loan recipient must clearly indicate the services to be provided by the engineer, as several of the following items are often completed utilizing in-house staff of the loan recipient. Submittal of a contract in draft form is suggested. The scope of a construction phase engineering services contract must, in general, include project management services, inspection of construction, Final Plan of Operation, User Charge Ordinance development (if applicable), O & M Manual development, and Project Performance services (project performance services must be provided by the design or construction engineer, and can not be provided directly by the loan recipient).
- C. The past costs of planning and design can be included in the loan amount based on contracts and billings for the SRF project if the loan recipient so desires, and again there are no required selection procedures.
- D. An engineering contract for services as presented in I.B. above (construction phase services) must be submitted with the SRF Application and must include the following items 1, 2, 5, 6, and 7 Appendix G-1 only. The loan recipient submits items 3, 4 and 6 separately.
  - 1. 40 CFR Part 32 Certification Form 5700-49, attached as Appendix C-1. 40 CFR Part 32 EPA regulations, attached as Appendix C-2 (11 pages).
  - 2. MBE Worksheets in accordance with Region VII Implementation Procedures of 40 CFR Part 31.36(e) and Section 31.36(e) of the March 11, 1988 EPA Procurement Regulations (attached as Appendices E-1 (3 pages), E-2 (1 page), E-3 (2 pages) and E-4 (1 page).)
  - 3. Applicant's assurance that proposed contractor(s) positive efforts and/or MBE/WBE (DBE) utilization have been reviewed, are satisfactory and meet regulatory requirements (attached as Appendix E-5).
  - 4. The EPA Form 5700-52A (5/96) is the MBE/WBE Utilization quarterly reporting form (attached as Appendix E-6), and is included for informational purposes. This form must be submitted by the Municipality during the construction of the project to report any qualifying contracts or subcontracts for engineering services for the project.
  - 5. SBRA Worksheet in accordance with KDHE Implementation Procedures of Section 129

of Public Law 100-590 (attached as Appendices D-1 (6 pages) and D-2).

6. Applicant's assurance that proposed contractor(s) SBRA utilization efforts have been reviewed, are satisfactory and meet regulatory requirements (attached as Appendix D-3).
  7. Contract Provisions of Kansas Statute Annotated (K.S.A.) 44-1030 Kansas Act Against Discrimination and State of Kansas Act Against Discrimination Contract Provisions (attached as Appendices G-1 and G-2. Appendix G-1 and G-2 must be attached to the contract. Appendix G-2 must be executed by the appropriate party and submitted to KDHE).
- E. An engineering contract for services as presented in I. C. above (planning and/or design services) may be submitted with the SRF Application if the loan recipient desires to include the cost of these contracts in the loan. The MBE/WBE (DBE) program and SBRA program requirements do not apply, and the 40 CFR Part 32 Certification Form and the Appendix G-2 should have been submitted with the construction phase services contract, therefore only the Contract Provisions of K.S.A. 44-1030 must be included (attached as Appendix G-1).

## II. Force Account -

- A. Construction by force account is discouraged. If the effort is small and easy for the Loan Recipient to do on its own, the Recipient should simply pay for it and save the red tape, additional approvals, and records keeping efforts.
- B. Inspection by force account is also discouraged. KDHE recommends the use of the Engineer for inspection. If a Loan Recipient desires to utilize "in-house" staff through force account, the Recipient must submit a written request to KDHE. The request for KDHE approval must include an estimate of the cost of force account inspection and the qualifications of the inspector.

## III. Construction Projects -

- A. Procurement actions are subject to State Law, Local Ordinances and Restrictions.
- B. KDHE policy is to recommend that formal bid opening with formal published advertising always be utilized. This is required if estimated cost is over \$200,000.
- C. Approval by KDHE is required of technical specifications and Federal bidding requirements through review of plans and specifications prior to advertising for bids. (Federal bidding requirements and construction general condition recommendations are presented as Appendix F).

- D. An Engineer's Estimate of contract cost is required, and must be submitted for all projects and/or contracts prior to advertising for bids. (Reference K.S.A. 13-1017, Class I Cities; References K.S.A. 14-440, Class II Cities; and Reference K.A.R. 28-15-61 Attached as Appendix A.).
- E. KDHE will review the design and engineering costs of a specific project for allowability within the KPWSLF program, and include a description of the allowable portions of the project within the Loan Agreement. Presently, as required by Federal Law the Program does not allow the cost of land or easement obtained through eminent domain for construction of facilities.
- F. KDHE review and approval of bids is required prior to award. (Reference K.A.R. 28-15-61, attached as Appendix A).
- G. KDHE will impose the policy requiring award of the lowest responsive, responsible bidder. - Reference K.A.R. 28-15-61 (Appendix A).
- H. KDHE policy will be to continue to request a definite completion time for the project, and the imposition of liquidated damages for delays in completion.

IV. Small Purchase (Supplies, Equipment) -

- A. Procurement actions are subject to State Law, Local Ordinances and Restrictions.
- B. Prior approval by KDHE is required of the technical specification. An Engineer's Estimate is required to be submitted. (Reference 28-15-61, attached as Appendix A).
- C.
  - 1. If estimate is over \$200,000 - use formal bidding procedure discussed in III. B. and C.
  - 2. If estimate is under \$200,000 - solicit and submit three written quotes.
  - 3. KDHE approval is required prior to purchase or award in both cases. (Reference K.A.R. 28-15-61, attached as Appendix A).

V. Recipient Appeals of KDHE Determinations -

- A. KDHE policy is to have the loan recipient resolve any and all disagreements with their design and construction agents.
- B. A formal process is developed, as follows, to allow the Loan Recipient to appeal a KDHE determination regarding financing the project or allowability of a project cost which the

recipient believes has an adverse affect.

1. KDHE policy is to resolve disagreements at the lowest staff levels in as administratively simple procedures as possible generally within the Water Supply Section.
2. The recipient must first approach Public Water Supply Section staff to informally discuss any disagreements with a KDHE determination. Following this, the recipient may then further appeal the issue to the Director of the Bureau of Water. This appeal should be in written form, clearly stating the issue in dispute. A formal written decision will be provided by the Bureau Director.
3. The decision of the Bureau Director can be further appealed to the Director of the Division of Environment. The Director's decision may be in the form of an administrative order. Appeal of an administrative order can be made in conformance with the Kansas Administrative Procedure Act (K.S.A. 1985 Supp. 77-501 through 77-541). Copies of the Administrative Procedure Act are available upon request.

## Permanent Administrative Regulations

### Article 15.--APPLICATION FOR PERMITS; DOMESTIC WATER SUPPLY

**28-15-50** Definitions. For the purposes of these regulations, the following words and phrases are defined as follows:

(a) Capacity" means the technical, managerial, and financial ability to comply with applicable national primary drinking water standards.

(b) Conservation plans and practices" means conservation plans and practices approved by either the Kansas water office or the division of water resources, Kansas department of agriculture, as consistent with guidelines developed and maintained by the Kansas water office pursuant to K.S.A. 74-2608 and amendments.

(c) Debt service coverage ratio" means the sum of net income plus interest expense plus depreciation, divided by the sum of principal and interest payments for debt service.

(d) Department" means the Kansas department of health and environment.

(e) Disadvantaged community" means a loan applicant or the service area of a loan applicant that meets affordability criteria established by the secretary.

(f) Equivalency" means that portion of the Kansas water supply loan fund that is equal to the amount of capitalization grants provided by the federal government.

(g) Equivalency project" means a project that is funded from the equivalency portion of the Kansas water supply loan fund.

(h) Fund" means the Kansas water supply fund established by K.S.A. 1996 Supp. 65-163e et seq., and amendments, and may consist of more than one pool of money.

(i) Intended use plan" means the plan prepared according to K.S.A. 1996 Supp. 65-163h and amendments.

(j) Loan agreement" means an executed contract between a loan applicant and the secretary confirming the purpose of the loan, the amount and terms of the

loan, the schedule of the loan payments and requirements, and any other agreed upon conditions set forth by the secretary.

(k) Loan applicant means one of the following:

(1) any political or taxing subdivision authorized by law to construct, operate, and maintain a public water supply system, including water districts;

(2) two or more such subdivisions jointly constructing, operating, or maintaining a public water supply system; or

(3) the Kansas rural water finance authority.

(l) National primary drinking water standards" means a regulation that specifies either a maximum contaminant level or a treatment technique along with associated monitoring and reporting requirements for contaminants with adverse health effects on persons.

(m) Project completion" means the initiation of operation or the ability to initiate operation.

(n) Project" means acquisition, construction, reconstruction, improving, equipping, rehabilitation, or extension of all or any part of a public water supply system.

(o) Public water supply system" has the meaning provided by K.S.A. 65-162a and amendments.

(p) Secretary" means the secretary of health and environment.

(q) Significant noncompliance" means failure to comply with any national primary drinking water standard according to criteria established by the administrator of the federal environmental protection agency.

(r) Water transfer" has the meaning provided by K.S.A. 1996 Supp. 82a-1501 and amendments. (Authorized by K.S.A. 1996 Supp. 65-163f; implementing K.S.A. 1996 Supp. 65-163d, as amended by 1997 S.B. 40, sec. 1, and K.S.A. 1996 Supp. 65-163e through 65-163u; effective Oct. 10, 1997.)

#### **28-15-51** Fund use eligibility.

(a) The fund shall be used only to provide loans to loan applicants for all or any part of the following:

(1) The acquisition, construction, reconstruction, improvement, equipping, rehabilitation, or extension of all or any part of a public water supply system;

(2) costs for project planning, design, and construction inspection, if included in the loan application; and

(3) if a construction contract has been awarded on or after August 6, 1996, refinancing the acquisition, construction, improvement, equipping, rehabilitation, or extension of all or any part of a public water supply system, including costs for project planning, design, and construction inspection. Refinancing shall be allowed only from funds provided directly or indirectly, by federal appropriations for federal fiscal year 1997.

(b) Each project eligible to receive loans shall appear on the project priority list prepared by the department. (Authorized by K.S.A. 1996 Supp. 65-163f; implementing K.S.A. 1996 Supp. 65-163d, as amended by 1997 S.B. 40, sec. 1, and K.S.A. 1996 Supp. 65-163e through 65-163u; effective Oct. 10, 1997.)

**28-15-52 Interest rate.**

(a) Each loan shall bear interest for the entire life of the loan at a fixed rate set by the secretary. This fixed rate shall be calculated as described in subsection (b). Fees for servicing the loans may also be set by the secretary.

(b) The interest rate shall be calculated as a percentage, as set forth in the intended use plan, of three months' average of the bond buyers 20 bond index." The average is determined using rates published on Monday of each week of the immediately preceding three months. The loan interest rate as calculated shall include any loan service fees.

(c) The interest rate and loan servicing fee shall be the same for all loan applicants. (Authorized by K.S.A. 1996 Supp. 65-163f; implementing K.S.A. 1996 Supp. 65-163d, as amended by 1997 S.B. 40, sec. 1, and K.S.A. 1996 Supp. 65-163e through 65-163u; effective Oct. 10, 1997.)

**28-15-53 Repayment of loans.**

(a) All principal and interest shall be repaid in accordance with the terms and conditions of the executed loan agreement. Repayments shall begin no later than two years after receipt of the first loan disbursement, and in no case later than one year following completion of the project. Repayment of the loan shall not exceed a 20-year repayment period as agreed upon in the loan agreement.

(b) Prepayment of the principal in whole or part may be made, in accordance with the terms and conditions of the executed loan agreement. (Authorized by K.S.A.

1996 Supp. 65-163f; implementing K.S.A. 1996 Supp. 65-163d, as amended by 1997 S.B. 40, sec. 1, and K.S.A. 1996 Supp. 65-163e through 65-163u; effective Oct. 10, 1997.)

**28-15-54 Dedicated loan repayment source.**

(a) Each loan recipient shall adopt one or more dedicated sources for repayment of the loan, including principal and interest. The dedicated sources of revenue may be in the form of revenue from water sales, service charges, connection fees, special assessments, property taxes, grants, or some combination of these sources. Each dedicated source of revenue shall be legally available to the loan recipient over the life of the loan and pledged to the repayment of the loan. Each dedicated source of revenue shall be approved by the secretary.

(1) Each loan recipient with general taxing authority shall commit to using that authority, if necessary, as a condition of receiving a loan. As an alternative to pledging general tax authority, any such loan recipient may purchase bond insurance.

(2) Each loan recipient without general taxing authority shall purchase bond insurance as a condition of receiving a loan. As an alternative to purchasing bond insurance, any such loan recipient shall pledge to maintain either of the following:

(A) A debt service coverage ratio of 140%; or

(B) a debt service coverage ratio of 125% combined with a 10% loan reserve account.

(b) Each loan recipient shall conduct an annual revenue source review during the entire life of the loan repayment obligation and, if necessary, shall implement new revenue rates as approved by the secretary. (Authorized by K.S.A. 1996 Supp. 65-163f; implementing K.S.A. 1996 Supp. 65-163d, as amended by 1997 S.B. 40, sec. 1, and K.S.A. 1996 Supp. 65-163e through 65-163u; effective Oct. 10, 1997.)

**28-15-55 Failure to repay loan on schedule.**

(a) Upon failure of a loan recipient to pay one or more installments of the loan repayment on schedule, the governing body of the loan recipient shall be consulted by the secretary and may be required to undergo a financial and management operations review.

(b) The governing body shall correct any deficiencies noted during the review and adopt charges as set by the secretary, to be levied against users of the



project. These charges shall remain in effect until the full amount of the loan, including principal and interest, has been repaid, unless otherwise approved by the secretary. The governing body of each loan recipient shall collect any such charges and shall forward all receipts from such charges on a schedule established by the secretary. (Authorized by K.S.A. 1996 Supp. 65-163f; implementing K.S.A. 1996 Supp. 65-163d, as amended by 1997 S.B. 40, sec. 1, and K.S.A. 1996 Supp. 65-163e through 65-163u; effective Oct. 10, 1997.)

**28-15-56 Project eligibility.**

(a) No assistance from the fund shall be provided for any water transfer project, or for any portion of a project involving a water transfer. No assistance from the fund shall be provided to any loan applicant who has not adopted and implemented water conservation plans and practices.

(b) No assistance shall be provided to any loan applicant in significant noncompliance with any applicable primary drinking water regulation, unless the project will return the loan applicant to compliance.

(c) No assistance shall be provided to any loan applicant lacking capacity, unless the loan applicant agrees to undertake feasible and appropriate changes in operations, including ownership, management, accounting, rates, maintenance, consolidation, alternative sources of supply, or other procedures if the secretary determines that such changes are required to demonstrate capacity.

(d) No assistance shall be provided for projects and activities deemed ineligible for participation by the U.S. environmental protection agency. Any such projects and activities shall be listed in the intended use plan. (Authorized by K.S.A. 1996 Supp. 65-163f; implementing K.S.A. 1996 Supp. 65-163d, as amended by 1997 S.B. 40, sec. 1, and K.S.A. 1996 Supp. 65-163e through 65-163u; effective Oct. 10, 1997.)

**28-15-57** Equivalency projects. Equivalency projects shall be required to comply with federal laws and executive orders that apply to all activities receiving federal assistance. In any given year, more projects than are necessary to equal the equivalency portion of the fund may be required to comply with equivalency project requirements, for the purpose of building an equivalency credit for future federal funds. (Authorized

by K.S.A. 1996 Supp. 65-163f; implementing K.S.A. 1996 Supp. 65-163d, as amended by 1997 S.B. 40, sec. 1, and K.S.A. 1996 Supp. 65-163e through 65-163u; effective Oct. 10, 1997.)

**28-15-58** User charge system. Each loan applicant shall develop and, after the secretary's review and approval, adopt a rate system that shall produce adequate revenue for repayment of the loan principal and interest, and for operation and maintenance of the entire public water supply system, including depreciation. (Authorized by K.S.A. 1996 Supp. 65-163f; implementing K.S.A. 1996 Supp. 65-163d, as amended by 1997 S.B. 40, sec. 1, and K.S.A. 1996 Supp. 65-163e through 65-163u; effective Oct. 10, 1997.)

**28-15-59** Project certification. Each loan recipient shall certify to the secretary whether or not the project meets its design requirements on the date one year after the initiation of operation of the project. The loan recipient shall be responsible for assuring timely correction and compliance, including recertification if the initial certification concluded that the project did not meet its design requirements. (Authorized by K.S.A. 1996 Supp. 65-163f; implementing K.S.A. 1996 Supp. 65-163d, as amended by 1997 S.B. 40, sec. 1, and K.S.A. 1996 Supp. 65-163e through 65-163u; effective Oct. 10, 1997.)

**28-15-60** Procurement. Each loan recipient shall follow state procurement laws and regulations applicable to the recipient and procedures established by the secretary. The secretary's approval is required before awarding any contract for construction. (Authorized by K.S.A. 1996 Supp. 65-163f; implementing K.S.A. Supp. 65-163d, as amended by 1997 S.B. 40, sec. 1, and K.S.A. 1996 Supp. 65-163e through 65-163u; effective Oct. 10, 1997.)

**28-15-61** Project documents.

(a) Each loan applicant shall submit the following documents for the secretary's review and approval:

(1) A completed loan application on application forms furnished by the department;

(2) an engineering report describing the need for the project, project design parameters, and an estimate of cost; and

(3) financial statements for the previous three years.

(b) Each loan recipient shall submit the following documents for the secretary's review and approval:

(1) Complete design plans, specifications, and construction bidding documents, including detailed cost estimates for competitive bidding, and projected construction and payment schedules;

(2) a plan for providing construction inspection services;

(3) a plan of operation, including an overall project completion schedule, annual operating cost projections for a minimum of five years, a description of the financial management system, and projected revenues to operate and maintain the public water supply system. Revenue projections shall also include the loan repayment obligations; and

(4) an operations manual, which shall be submitted before 90% of the project is completed. (Authorized by K.S.A. 1996 Supp. 65-163f; implementing K.S.A. 1996 Supp. 65-163d, as amended by 1997 S.B. 40, sec. 1, and K.S.A. 1996 Supp. 65-163e through 65-163u; effective Oct. 10, 1997.)

**28-15-62 Financial capability.** As part of the loan application, the loan applicant shall demonstrate and certify to the secretary that the applicant has the financial capability to repay the loan and to cover the costs of operation and maintenance of the entire public water supply system of which the proposed project is an integral part. This financial assessment shall cover the life of the loan obligation and consider, at a minimum, changes in economic and population growth, depreciation, existing debt obligations, revenues, project costs, and effects on user charge rates. (Authorized by K.S.A. 1996 Supp. 65-163f; implementing K.S.A. 1996 Supp. 65-163d, as amended by 1997 S.B. 40, sec. 1, and K.S.A. 1996 Supp. 65-163e through 65-163u; effective Oct. 10, 1997.)

**28-15-63 Public participation.**

(a) Each loan applicant shall conduct a minimum of one public hearing before execution of the loan agreement, to discuss the proposed project and receive input on alternatives. Notice of the public hearing shall be provided to the department and shall be published in one or more newspapers, as needed to cover the project service area, at least 30 calendar days before the public

hearing.

(b) A record of the public hearing and proof of publication shall be submitted prior to execution of the loan agreement.

(c) The 30-day public notice requirement may be waived by the secretary for any project deemed an emergency. (Authorized by K.S.A. 1996 Supp. 65-163f; implementing K.S.A. 1996 Supp. 65-163d, as amended by 1997 S.B. 40, sec. 1, and K.S.A. 1996 Supp. 65-163e through 65-163u; effective Oct. 10, 1997.)

**28-15-64 Environmental review.**

(a) The Environmental review procedure for Kansas public water supply loan fund," dated July 1997, is adopted by reference as the required environmental review procedure for an equivalency project.

(b) For an equivalency project, 40 CFR 6.508(a), 6.511(b), and 6.512, as in effect on July 1, 1996, are hereby adopted by reference.

(c) Those members of the public who participated in the environmental review process shall have the right to appeal the decisions made within that process. All such appeals shall be conducted pursuant to the Kansas administrative procedure act and the act for judicial review set forth in K.S.A. 77-501 et seq. and 77-601 et seq., respectively.

(d) When used in any provision adopted from 40 CFR Part 6, references to EPA" shall be replaced with the Kansas department of health and environment"; grant" shall be replaced with loan agreement"; grantee" shall be replaced with applicant." (Authorized by K.S.A. 1996 Supp. 65-163f; implementing K.S.A. 1996 Supp. 65-163d, as amended by 1997 S.B. 40, sec. 1, and K.S.A. 65-163e through 65-163u; effective Oct. 10, 1997.)

**28-15-65 Project accounts.** Each loan recipient shall maintain project accounts in accordance with generally accepted government accounting standards as defined in the 1994 edition of the governmental accounting, auditing, and financial reporting" manual issued by the government finance officers association. (Authorized by K.S.A. 1996 Supp. 65-163f; implementing K.S.A. 1996 Supp. 65-163d, as amended by 1997 S.B. 40, sec. 1, and K.S.A. 1996 Supp. 65-163e through 65-163u; effective Oct. 10, 1997.)

**LOCAL GOVERNMENT  
PROCUREMENT PROCEDURE  
FOR  
PROFESSIONAL ENGINEERING SERVICES**

From "Kansas Consulting Engineers"

When a local government desires the services of a professional engineer, the procedure used to contract for such services has a great deal to do with how satisfied the government entity will be with the engineer and ultimately with the resulting public works project. Quite frequently the best procedure is simply to negotiate with the firm which has established a prior good relationship with the governing body, particularly if the design professional is qualified for the project under consideration.

There are, however, occasions when the local government will wish to consider several engineering firms; therefore, under these circumstances the procedure below is recommended.

This procurement procedure consists of four major elements: notice, submittals, review of submittals, and negotiations. Each element is discussed in some detail in the following paragraphs:

1. **Notice:** The notice to consultants can be formal or informal depending upon the size and complexity of the project under consideration. It can be done by letter to consultants with whom the local government is familiar, or by publication in newspapers and/or trade journals. The notice should be concise and as brief as possible containing the following information.
  - a. Name of the local government requiring services and the name of a contact person.
  - b. A description and location of the project.
  - c. The deadline for receipt of submittals from interested design professionals.
2. **Submittals:** All interested professional architect/engineers responding to the notice should provide the requested information in a convenient manner. This response should contain all the necessary information and shall also include the following information:
  - a. A statement of the technical approach to be utilized in performing the project.
  - b. A statement of his proposed schedule for accomplishment.

- c. Facilities, equipment and personnel available for the project.
  - d. Any other supporting material as may be applicable.
3. **Review of Submittals:** The governmental body should establish a review panel to receive and review submittals for the proposed work. The review panel should meet promptly after the deadline date and should review and evaluate all submittals received.

A “short list” comprised of three submittals (if available) should be established and ranked in order of preference. The panel is encouraged to check references of the firms by phone or letter.

The review panel may desire to further examine the experience and qualifications of the “short listed” firms through personal interviews. In such cases, the firms identified by the ranked submittals should be contacted and invited to schedule interviews. Adequate, but specified time should be allowed for this interview.

After the interviews, or when the selection is determined, the top-ranked firms should be invited to negotiate terms and conditions of the contract for professional services.

4. **Negotiations:** The governmental body should undertake to negotiate with the top-ranked firm as soon as possible after the selection has been made.

In the event the governmental body is unable to negotiate a suitable contract with the first-ranked firm, negotiations should be terminated with that firm, and the governmental body should then initiate negotiations with the second-ranked firm. This process should be continued until suitable contractual arrangements with the firm have been satisfactorily consummated. All unsuccessful firms should be so advised by letter.

This procedure has been carefully prepared for the mutual protection of the client and the consultant. It has stood the test of time and is widely accepted as the best for the client and the design professional.

## **Article 58 - State Engineering and Land Surveying Services**

**75-5801. State policy.** The legislature hereby declares it to be the policy of this state to publicly announce all requirements for engineering services, and to negotiate contracts for engineering services on the basis of demonstrated competence and qualification for the type of professional services required and at fair and reasonable fees.

**History:** L. 1977, ch. 287, " 1; April 21.

**75-5802. Definitions.** As used in this act unless the context specifically requires otherwise:

(a) "Firm" means any individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice the profession of engineering and provide engineering services or practice the profession of land surveying and provide land surveying services.

(b) "Engineering services" means those services described in subsection (i) of K.S.A. 74-7003 and amendments thereto.

(c) "Land surveying" means those services described in subsection (j) of K.S.A. 74-7003, and amendments thereto.

(d) "Agency head" means the chief administrative officer of a state agency, as that term is defined in subsection (3) of K.S.A. 75-3701 and amendments thereto, but shall not include the chief administrative officer of any state institution.

(e) "Negotiating committee" means a committee designated to negotiate as provided in this act, and consisting of (1) the agency head of the state agency for which the proposed project is planned, or a person designated by such agency head, (2) the secretary of administration, or a person designated by said secretary, and (3) the chief administrative officer of the state institution for which the proposed project is planned, or when the proposed project is not planned for a state institution, the agency head shall designate a second person in lieu of the chief administrative officer of a state institution.

(f) "Project" means any capital improvement project or any study, plan, survey or program activity of a state agency, including development of new or existing programs and preparation of federal grant applications.

(g) "State building advisory commission" means the state building advisory commission created by K.S.A. 75-3780 and amendments thereto, or any duly authorized officer or employee of such commission.

**History:** L. 1977, ch. 287, " 2; L. 1978, ch. 337, " 30; L. 1992, ch. 240, " 30; L. 1996, ch. 48, " 1; Mar. 28.

**75-5803. Qualification statements of engineering and land surveying firms; annual list of qualified firms; selection of firms from list prepared by state building advisory commission in certain cases; procedure.** (a) In the procurement of engineering or land surveying services, each agency head which utilizes engineering or land surveying services shall encourage firms engaged in the lawful practice of their profession to annually submit a statement of qualifications and performance data to the agency head and to the state building advisory commission. The agency head shall thereafter cause to be prepared annually a list of firms qualified, based upon criteria established and published by such agency head, to provide such engineering or land surveying services.

(b) Except as otherwise provided in subsection (c), when a project requiring engineering or land surveying services is proposed for a state agency, the agency head for such state agency shall evaluate current statements of qualifications and performance data on file with the agency head, together with those that may be submitted by other firms regarding the proposed project. The agency head may establish time frames for the receipt of qualifications statements and performance data from any firm wishing to be considered for the proposed project. The agency head shall conduct discussions with not less than three firms regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required engineering or land surveying services and then such agency head shall select from among all such firms, on a rotational basis, the firm to perform the engineering or land surveying services, unless such firm refuses to provide such engineering or land surveying services.

(c) In any case where a project requiring engineering or land surveying services is proposed which concerns the construction of any building or facility or any major repairs or improvements to any building or facility, including in any case but not limited to any heating, cooling or power facility, for a state agency and a negotiating committee is not convened under K.S.A. 75-5804 and amendments thereto, the agency head of the state agency shall notify the state building advisory commission and shall request a list of firms qualified to provide the engineering or land surveying services for such project. Upon receipt of any such request, the state building advisory commission shall evaluate the current statements of qualifications and performance data on file, together with those statements that may be submitted by other firms, regarding the proposed project and other information developed and available to the state building advisory commission, and shall prepare a list of at least three and not more than five firms which, in the opinion of the state building advisory commission, are qualified to furnish the engineering or land surveying services for the proposed project. Each such list shall be submitted to the agency head without any recommendation of preference or other recommendation. The agency head shall conduct discussions with the firms listed and shall select the firm to perform the engineering or land surveying services, all in the manner provided in subsection (b). If the agency head is unable to enter into a contract for the necessary engineering or land

surveying services with any firm so listed, the agency head shall request the state building advisory commission to prepare and submit another list of firms qualified to provide such engineering or land surveying services and shall proceed in accordance with this subsection. The secretary of administration shall provide to the agency head such information, advice and assistance as may be requested by the agency head regarding the selection of a firm to provide engineering or land surveying services for such projects, including all information and evaluations regarding the listed firms gathered and developed under K.S.A. 75-3783, and amendments thereto.

**History:** L. 1977, ch. 287, " 3; L. 1978, ch. 337, " 31; L. 1984, ch. 336, " 1; L. 1996, ch. 48, " 2; Mar. 28.

**75-5804. Negotiating committee convened; list of qualified firms for projects; list prepared by state building advisory commission in certain cases; procedure.** (a) Whenever it becomes necessary in the judgment of the agency head of a state agency for which a project is proposed and, in any case where the total cost of such a proposed project is expected to exceed \$250,000, the agency head shall convene a negotiating committee. Except as otherwise provided in subsection (b), the agency head shall submit the list of at least three and not more than five of the most highly qualified firms to the negotiating committee so convened, without any recommendation of preference or other recommendation.

(b) Whenever a negotiating committee is convened under this section for a proposed project requiring engineering or land surveying services which concerns the construction of any building or facility or any major repairs or improvements to any building or facility, including but not limited, to any heating, cooling or power facility, for a state agency, the agency head for the state agency shall notify the state building advisory commission of the project and shall request a list of firms qualified to provide the engineering or land surveying services for the proposed project. Upon receipt of any such request the state building advisory commission shall evaluate the current statements of qualifications and performance data on file, together with those statements that may be submitted by other firms regarding the proposed project and other information developed and available to the state building advisory commission. The commission shall prepare a list of at least three and not more than five firms which, in the opinion of the state building advisory commission, are qualified to furnish the engineering or land surveying services for the proposed project. Each such list shall be submitted to the negotiating committee so convened without any recommendation of preference or other recommendation.

**History:** L. 1977, ch. 287, " 4; L. 1978, ch. 337, " 32; L. 1979, ch. 280, " 19; L. 1996, ch. 48, " 3; L. 1996, ch. 238, " 1; July 1.

**75-5805. Written project description; no alteration without approval.** The negotiating committee shall cause a written description of the scope or program of the proposed project to be prepared. Such description shall be used in the negotiations between the negotiating committee and qualified firms. The proposed project description shall be the basis for the project development and such description shall not be altered without the prior approval of the negotiating committee.

**History:** L. 1977, ch. 287, " 5; April 21.

**75-5806. Negotiating committee access to data on firms; selection of firms.** The negotiating committee for each proposed project shall have access to the current statements of qualifications and performance data on file with the agency head for the firms listed by the agency head. In the case of firms listed by the state building advisory commission, the negotiating committee shall have access to the current statements of qualifications and performance data on file with the state building advisory commission and to all information and evaluations regarding the listed firms gathered and developed under K.S.A. 75-3783, and amendments thereto. The negotiating committee shall conduct discussions with each of the firms so listed regarding the proposed project and then shall select a single firm from such listing to provide engineering or land surveying services in accordance with this act.

**History:** L. 1977, ch. 287, " 6; L. 1978, ch. 337, " 33; L. 1996, ch. 48, " 4; Mar. 28.

**75-5807. Negotiation of contract with selected firm; duties of committee; failure of negotiations with selected firms; additional list of nominees.** (a) Each negotiating committee shall determine which engineering or land surveying services are necessary and shall negotiate a contract for each proposed project with the selected firm for the necessary engineering or land surveying services. In such negotiations, the negotiating committee shall always consider demonstrated competence and qualifications and shall take into account the estimated value of the engineering or land surveying services to be rendered and the scope, complexity and professional nature thereof.

(b) If the negotiating committee is unable to negotiate a satisfactory contract with the firm considered to be the most qualified, negotiations with that firm shall be terminated. The negotiating committee shall then undertake negotiations with the second most qualified firm. If there is a failing of accord with the second most qualified firm, negotiations with such firm shall be terminated. The negotiating committee shall then undertake negotiations with the third, fourth and fifth most qualified firms in turn.

(c) If the negotiating committee is unable to negotiate a satisfactory contract with any of the selected firms, the negotiating committee shall reevaluate the necessary engineering or land surveying services and fee requirements and reopen negotiations with any of the firms on the list submitted by the agency head. If the negotiating committee is still unable to enter into a contract for the necessary engineering or land surveying services, the negotiating committee shall request the agency head or, in the case of a proposed project under subsection (b) of K.S.A. 75-5804, and amendments thereto, the state building advisory commission to provide another list of firms to be negotiated with by the negotiating committee and, upon receipt of such list, the negotiating committee shall proceed in accordance with the provisions of this act.

**History:** L. 1977, ch. 287, " 7; L. 1978, ch. 337, " 34; L. 1996, ch. 48, " 5; Mar. 28.





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**EPA PROJECT CONTROL NUMBER**

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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
Washington, DC 20460**

**Certification Regarding  
Debarment, Suspension, and Other Responsibility Matters**

The prospective participant certifies to the best of its knowledge and belief that it and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- (b) Have not within a three year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of federal or State antitrust statutes or commission of embezzlement, theft, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1) (b) of this certification; and
- (d) Have not within a three year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

I understand that a false statement on this certification may be grounds for rejection of this proposal or termination of the award. In addition, under 18 USC Sec. 1001, a false statement may result in a fine of up to \$10,000 or imprisonment for up to 5 years, or both.

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Typed Name & Title of Authorized Representative

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Signature of Authorized Representative

Date

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☐ I am unable to certify to the above statements. My explanation is attached.

## **Instructions**

Under Executive Order 12549, and individual or organization debarred or excluded from participation in Federal assistance or benefit programs may not receive any assistance award under a Federal program, or a sub-agreement thereunder for \$25,000 or more.

Accordingly, each prospective recipient of an EPA grant, loan, or cooperative agreement and any contract or sub-agreement participant thereunder must complete the attached certification or provide an explanation why they cannot. For further details, see 40 CFR 32.510, Participants' responsibilities, in the attached regulation.

### **Where to Submit**

The prospective EPA grant, loan, or cooperative agreement recipient must return the signed certification or explanation with its application to the appropriate EPA Headquarters or Regional office, as required in the application instructions.

A prospective prime subcontractor must submit a completed certification or explanation to the individual or organization awarding the contract.

Each prospective subcontractor must submit a completed certification to the prime contractor for the project.

### **How to Obtain Forms:**

EPA includes the certification form, instructions, and a copy of its implementing regulation (40 CFR Part 32) in each application kit. Applicants may reproduce these materials as needed and provide them to their prospective prime contractor, who, in turn, may reproduce and provide them to prospective subcontractors.

Additional copies/assistance may be requested from:

Compliance Branch  
Grants Administration Division ( PM-216)  
U.S. Environmental Protection Agency  
401 M Street, SW  
Washington, DC 20460  
(Telephone: 202/475-8025)  
EPA Form 5700-49 (11-88)

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Environmental Protection Agency §

PART 32— GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG -FREE WORK-PLACE (GRANTS); CLEAN AIR ACT AND CLEAN WATER ACT INELIGIBILITY OF FACILITIES IN PERFORMANCE OF FEDERAL CONTRACTS, GRANTS AND LOANS

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APPENDIX A TO PART 32— CERTIFICATION RE-GARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS—PRIMARY COVERED TRANSACTIONS

APPENDIX B TO PART 32— CERTIFICATION RE-GARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION—LOWER TIER COVERED TRANSACTIONS

APPENDIX C TO PART 32— CERTIFICATION RE-GARDING DRUG-FREE WORKPLACE REQUIREMENTS

AUTHORITY: E.O. 12549; 41 U.S.C. 701 *et seq.*; 7 U.S.C. 136 *et seq.*; 15 U.S.C. 2601 *et seq.*; 20 U.S.C. 4011 *et seq.*; 33 U.S.C. 1251 *et seq.*; 42 U.S.C. 300f, 4901, 6901, 7401, 9801 *et seq.*; E.O. 12689; E.O. 11738; Pub. L. 103–355 § 2455.

SOURCE: 53 FR 19196, 19204, May 26, 1988, unless otherwise noted.

CROSS REFERENCE: See also

Office of Management and Budget notice published at 55FR 21679, May 25, 1990, and at 60 FR 33036, June 26, 1995.

**Subpart A--General**

**Sec. 32.100 Purpose.**

(a) Executive Order (E.O.) 12549 provides that, to the extent permitted by law, Executive departments and agencies shall participate in a government wide system for nonprocurement debarment and suspension.

A person who is debarred or suspended shall be excluded from Federal financial and nonfinancial assistance and benefits under Federal programs and activities. Debarment or suspension of a participant in a program by one agency shall have government wide effect.

(b) These regulations implement section 3 of E.O. 12549 and the guidelines promulgated by the Office of Management and Budget under section 6 of the E.O. by:

(1) Prescribing the programs and activities that are covered by the government wide system;

(2) Prescribing the government wide criteria and government wide minimum due process procedures that each agency shall use;

(3) Providing for the listing of debarred and suspended participants, participants declared ineligible (see

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definition of "ineligible" in Sec. 32.105), and participants who have voluntarily excluded themselves from participation in covered transactions;

(4) Setting forth the consequences of a debarment, suspension, determination of ineligibility, or voluntary exclusion; and

(5) Offering such other guidance as necessary for the effective implementation and administration of the government wide system.

(c) These regulations also implement Executive Order 12689 (3 CFR, 1989 Comp., p. 235) and 31 U.S.C. 6101 note (Public Law 103-355, sec. 2455, 108 Stat. 3327) by--

(1) Providing for the inclusion in the List of Parties Excluded from Federal Procurement and Nonprocurement Programs all persons proposed for debarment, debarred or suspended under the Federal Acquisition Regulation, 48 CFR part 9, subpart 9.4; persons against which government wide exclusions have been entered under this part; and persons determined to be ineligible; and

(2) Setting forth the consequences of a debarment, suspension, determination of ineligibility, or voluntary exclusion.

(d) Although these regulations cover the listing of ineligible participants and the effect of such listing, they do not prescribe policies and procedures governing declarations of ineligibility.

(e) Facilities ineligible to provide goods, materials, or services under Federal contracts, loans or assistance, pursuant to Section 306 of the Clean Air Act (CAA) or Section 508 of the Clean

Water Act (CWA) are excluded in accordance with the terms of those statutes. Reinstatement of a CAA or CWA ineligible facility may be requested in accordance with the procedures at Sec. 32.321.

[60 FR 33040, 33059, June 26, 1995, as amended at 61 FR 28756, June 6, 1996]

**Sec. 32.105 Definitions.**

The following definitions apply to this part:

*Adequate evidence.* Information sufficient to support the reasonable belief that a particular act or omission has occurred.

*Affiliate.* Persons are affiliates of each other if, directly or indirectly, either one controls or has the power to control the other, or, a third person controls or has the power to control both. Indicia of control include, but are not limited to: interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the suspension or debarment of a person which has the same or similar management, ownership, or principal employees as the suspended, debarred, ineligible, or voluntarily excluded person.

*Agency.* Any executive department, military department or defense agency or other agency of the executive branch, excluding the independent regulatory agencies.

*Agency head.* Administrator of the Environmental Protection Agency.

*CAA or CWA ineligibility.* The status of a facility which, as provided in section 306 of the Clean Air Act (CAA) and section 508 of the Clean Water Act (CWA), is ineligible to be used in the performance of a Federal contract, subcontract, loan, assistance award or covered transaction. Such ineligibility commences upon conviction of a facility owner, lessee, or supervisor for a violation of section 113 of the CAA or section 309(c) of the CWA, which violation occurred at the facility. The ineligibility of the facility continues until such time as the EPA Debarring Official certifies that the condition giving rise to the CAA or CWA criminal conviction has been corrected.

*Civil judgment.* The disposition of a civil action by any court of competent jurisdiction, whether entered by verdict, decision, settlement, stipulation, or otherwise creating a civil liability for the wrongful acts complained of; or a final determination of liability under the Program Fraud Civil Remedies Act of 1988 (31 U.S.C. 3801-12).

*Conviction.* A judgment of conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, including a plea of nolo contendere.

*Debarment.* An action taken by a debarring official in accordance with these regulations to exclude a person from participating in covered transactions. A person so excluded is

"debarred."

*Debarring official.* An official authorized to impose debarment. The debarring official is either:

- (1) The agency head, or
- (2) An official designated by the agency head.

*EPA.* Environmental Protection Agency.

*Facility.* Any building, plant, installation, structure, mine, vessel, floating craft, location or site of operations at which, or from which, a Federal contract, subcontract, loan, assistance award or covered transaction is to be performed. Where a location or site of operations contains or includes more than one building, plant, installation or structure, the entire location or site shall be deemed the facility unless otherwise limited by EPA.

*Indictment.* Indictment for a criminal offense. An information or other filing by competent authority charging a criminal offense shall be given the same effect as an indictment.

*Ineligible.* Excluded from participation in Federal nonprocurement programs pursuant to a determination of ineligibility under statutory, executive order, or regulatory authority, other than Executive Order 12549 and its agency implementing regulations; for example, excluded pursuant to the Davis-Bacon Act and its implementing regulations, the equal employment opportunity acts and executive orders, or the environmental protection acts and executive orders. A person is ineligible where the determination of

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ineligibility affects such person's eligibility to participate in more than one covered transaction.

*Legal proceedings.* Any criminal proceeding or any civil judicial proceeding to which the Federal Government or a State or local government or quasi-governmental authority is a party. The term includes appeals from such proceedings.

*List of Parties Excluded from Federal Procurement and Nonprocurement Programs.* A list compiled, maintained and distributed by the General Services Administration (GSA) containing the names and other information about persons who have been debarred, suspended, or voluntarily excluded under Executive Orders 12549 and 12689 and these regulations or 48 CFR part 9, subpart 9.4, persons who have been proposed for debarment under 48 CFR part 9, subpart 9.4, and those persons who have been determined to be ineligible.

*Notice.* A written communication served in person or sent by certified mail, return receipt requested, or its equivalent, to the last known address of a party, its identified counsel, its agent for service of process, or any partner, officer, director, owner, or joint venturer of the party. Notice, if undeliverable, shall be considered to have been received by the addressee five days after being properly sent to the last address known by the agency.

*Participant.* Any person who submits a proposal for, enters into, or reasonably may be expected to enter into a covered

transaction. This term also includes any person who acts on behalf of or is authorized to commit a participant in a covered transaction as an agent or representative of another participant.

*Person.* Any individual, corporation, partnership, association, unit of government or legal entity, however organized, except: foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, and entities consisting wholly or partially of foreign governments or foreign governmental entities.

*Preponderance of the evidence.* Proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

*Principal.* Officer, director, owner, partner, key employee, or other person within a participant with primary management or supervisory responsibilities; or a person who has a critical influence on or substantive control over a covered transaction, whether or not employed by the participant. Persons who have a critical influence on or substantive control over a covered transaction are:

- (1) Principal investigators.
- (2) Bid and proposal estimators and preparers.

*Proposal.* A solicited or unsolicited bid, application, request, invitation to consider or similar communication by or on behalf of a person seeking to participate or to receive a benefit,

directly or indirectly, in or under a covered transaction.

*Respondent.* A person against whom a debarment or suspension action has been initiated.

*State.* Any of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency of a State, exclusive of institutions of higher education, hospitals, and units of local government. A State instrumentality will be considered part of the State government if it has a written determination from a State government that such State considers that instrumentality to be an agency of the State government.

*Suspending official.* An official authorized to impose suspension.

The suspending official is either:

- (1) The agency head, or
- (2) An official designated by the agency head.

*Suspension.* An action taken by a suspending official in accordance with these regulations that immediately excludes a person from participating in covered transactions for a temporary period, pending completion of an investigation and such legal, debarment, or Program Fraud Civil Remedies Act proceedings as may ensue. A person so excluded is "suspended."

*Voluntary exclusion or voluntarily excluded.* A status of nonparticipation or limited participation in covered transactions assumed by a

person pursuant to the terms of a settlement.

[53 FR 19196, 19204, May 26, 1988, as amended at 53 FR 19196, May 26, 1988; 59 FR 50692, Oct. 5, 1994; 60 FR 33040, 33059, June 26, 1995; 61 FR 28756, June 6, 1996; 62 FR 47149, Sept. 8, 1997]

**Sec. 32.110 Coverage.**

(a) These regulations apply to all persons who have participated, are currently participating or may reasonably be expected to participate in transactions under Federal nonprocurement programs. For purposes of these regulations such transactions will be referred to as "covered transactions."

(1) Covered transaction. For purposes of these regulations, a covered transaction is a primary covered transaction or a lower tier covered transaction. Covered transactions at any tier need not involve the transfer of Federal funds.

(i) Primary covered transaction. Except as noted in paragraph (a)(2) of this section, a primary covered transaction is any nonprocurement transaction between an agency and a person, regardless of type, including: grants, cooperative agreements, scholarships, fellowships, contracts of assistance, loans, loan guarantees, subsidies, insurance, payments for specified use, donation agreements and any other nonprocurement transactions

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between a Federal agency and a person. Primary covered transactions also include those transactions specially designated by the U.S. Department of Housing and Urban Development in such agency's regulations governing debarment and suspension.

(ii) Lower tier covered transaction. A lower tier covered transaction is:

(A) Any transaction between a participant and a person other than a procurement contract for goods or services, regardless of type, under a primary covered transaction.

(B) Any procurement contract for goods or services between a participant and a person, regardless of type, expected to equal or exceed the Federal procurement small purchase threshold fixed at 10 U.S.C. 2304(g) and 41 U.S.C. 253(g) (currently \$25,000) under a primary covered transaction.

(C) Any procurement contract for goods or services between a participant and a person under a covered transaction, regardless of amount, under which that person will have a critical influence on or substantive control over that covered transaction. Such persons are:

(1) Principal investigators.

(2) Providers of federally required audit services.

(2) Exceptions. The following transactions are not covered:

(i) Statutory entitlements or mandatory awards (but not subtier awards thereunder which are not themselves mandatory), including deposited funds insured by the Federal

Government;

(ii) Direct awards to foreign governments or public international organizations, or transactions with foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, entities consisting wholly or partially of foreign governments or foreign governmental entities;

(iii) Benefits to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted);

(iv) Federal employment;

(A) For the purpose of this paragraph, no transactions under EPA assistance programs are deemed to be pursuant to agency-recognized emergencies or disasters.

(B) [Reserved]

(v) Transactions pursuant to national or agency recognized emergencies or disasters;

(vi) Incidental benefits derived from ordinary governmental operations; and

(vii) Other transactions where the application of these regulations would be prohibited by law.

(b) Relationship to other sections. This section describes the types of transactions to which a debarment or suspension under the regulations will apply. Subpart B, "Effect of Action," Sec. 32.200, "Debarment or suspension," sets forth the consequences

of a debarment or suspension. Those consequences would obtain only with respect to participants and principals in the covered transactions and activities described in Sec. 32.110(a). Sections 32.325, "Scope of debarment," and 32.420, "Scope of suspension," govern the extent to which a specific participant or organizational elements of a participant would be automatically included within a debarment or suspension action, and the conditions under which affiliates or persons associated with a participant may also be brought within the scope of the action.

(c) Relationship to Federal procurement activities. In accordance with E.O. 12689 and section 2455 of Public Law 103-355, any debarment, suspension, proposed debarment or other government wide exclusion initiated under the Federal Acquisition Regulation (FAR) on or after August 25, 1995 shall be recognized by and effective for Executive Branch agencies and participants as an exclusion under this regulation. Similarly, any debarment, suspension or other government wide exclusion initiated under this regulation on or after August 25, 1995 shall be recognized by and effective for those agencies as a debarment or suspension under the FAR.

(d) Except as provided in Sec. 32.215 of this part, Federal agencies shall not use a CAA or CWA ineligible facility in the performance of any Federal contract, subcontract, loan, assistance award or covered transaction.

[53 FR 19196, 19204, May 26, 1988, as amended at 53 FR 19197, May 26, 1988; 60 FR 33041, 33059, June 26, 1995; 61 FR 28757, June 6, 1996]

**Sec. 32.115 Policy.**

(a) In order to protect the public interest, it is the policy of the Federal Government to conduct business only with responsible persons. Debarment and suspension are discretionary actions that, taken in accordance with Executive Order 12549 and these regulations, are appropriate means to implement this policy.

(b) Debarment and suspension are serious actions which shall be used only in the public interest and for the Federal Government's protection and not for purposes of punishment. Agencies may impose debarment or suspension for the causes and in accordance with the procedures set forth in these regulations.

(c) When more than one agency has an interest in the proposed debarment or suspension of a person, consideration shall be given to designating one agency as the lead agency for making the decision. Agencies are encouraged to establish methods and procedures for coordinating their debarment or suspension actions.

(d) It is EPA policy to exercise its authority to reinstate CAA or CWA ineligible facilities in a manner which is consistent with the policies in paragraphs (a) and (b) of this section.

The requirements of Subpart F and Appendix C to Part 32 do not apply to KPWSLF projects

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[53 FR 19196, 19204, May 26, 1988, as amended at 53 FR 19197, May 26, 1988; 61 FR 28757, June 6, 1996]

**Subpart B--Effect of Action**

**Sec. 32.200 Debarment or suspension.**

(a) Primary covered transactions. Except to the extent prohibited by law, persons who are debarred or suspended shall be excluded from primary covered transactions as either participants or principals throughout the Executive Branch of the Federal Government for the period of their debarment, suspension, or the period they are proposed for debarment under 48 CFR part 9, subpart 9.4. Accordingly, no agency shall enter into primary covered transactions with such excluded persons during such period, except as permitted pursuant to Sec. 32.215.

(b) Lower tier covered transactions. Except to the extent prohibited by law, persons who have been proposed for debarment under 48 CFR part 9, subpart 9.4, debarred or suspended shall be excluded from participating as either participants or principals in all lower tier covered transactions (see Sec. 32.110(a)(1)(ii)) for the period of their exclusion.

(c) Exceptions. Debarment or suspension does not affect a person's eligibility for--

(1) Statutory entitlements or mandatory awards (but not subtier

The requirements of Subpart F and Appendix C to Part 32 do not apply to KPWSLF projects

awards thereunder which are not themselves mandatory), including deposited funds insured by the Federal Government;

(2) Direct awards to foreign governments or public international organizations, or transactions with foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, and entities consisting wholly or partially of foreign governments or foreign governmental entities;

(3) Benefits to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted);

(4) Federal employment;

(5) Transactions pursuant to national or agency-recognized emergencies or disasters;

(6) Incidental benefits derived from ordinary governmental operations; and

(7) Other transactions where the application of these regulations would be prohibited by law.

[60 FR 33041, 33059, June 26, 1995]

**Sec. 32.205 Ineligible persons.**

Persons who are ineligible, as defined in Sec. 32.105(i), are excluded in accordance with the applicable statutory, executive order, or

regulatory authority.

**Sec. 32.210 Voluntary exclusion.**

Persons who accept voluntary exclusions under Sec. 32.315 are excluded in accordance with the terms of their settlements. EPA shall, and participants may, contact the original action agency to ascertain the extent of the exclusion.

**Sec. 32.215 Exception provision.**

(a) EPA may grant an exception permitting a debarred, suspended, or voluntarily excluded person, or a person proposed for debarment under 48 CFR part 9, subpart 9.4, to participate in a particular covered transaction upon a written determination by the agency head or an authorized designee stating the reason(s) for deviating from the Presidential policy established by Executive Order 12549 and Sec. 32.200. However, in accordance with the President's stated intention in the Executive Order, exceptions shall be granted only infrequently. Exceptions shall be reported in accordance with Sec. 32.505(a).

(b) Any agency head, or authorized designee, may except any Federal contract, subcontract, loan, assistance award or covered transaction, individually or as a class, in whole or in part, from the prohibitions otherwise applicable by reason of a CAA or CWA ineligibility. The agency head granting

the exception shall notify the EPA Debarring Official of the exception as soon, before or after granting the exception, as may be practicable. The justification for such an exception, or any renewal thereof, shall fully describe the purpose of the contract or covered transaction, and show why the paramount interest of the United States requires the exception.

(c) The EPA Debarring Official is the official authorized to grant exceptions under this section for EPA.

[61 FR 28757, June 6, 1996]

**Sec. 32.220 Continuation of covered transactions.**

(a) Notwithstanding the debarment, suspension, proposed debarment under 48 CFR part 9, subpart 9.4, determination of ineligibility, or voluntary exclusion of any person by an agency, agencies and participants may continue covered transactions in existence at the time the person was debarred, suspended, proposed for debarment under 48 CFR part 9, subpart 9.4, declared ineligible, or voluntarily excluded. A decision as to the type of termination action, if any, to be taken should be made only after thorough review to ensure the propriety of the proposed action.

(b) Agencies and participants shall not renew or extend covered transactions (other than no-cost time extensions) with any person who is debarred, suspended, proposed for

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debarment under 48 CFR part 9, subpart 9.4, ineligible or voluntarily excluded, except as provided in Sec. 32.215.

[60 FR 33041, 33059, June 26, 1995]

**Sec. 32.225 Failure to adhere to restrictions.**

(a) Except as permitted under Sec. 32.215 or Sec. 32.220, a participant shall not knowingly do business under a covered transaction with a person who is--

- (1) Debarred or suspended;
- (2) Proposed for debarment under 48 CFR part 9, subpart 9.4; or
- (3) Ineligible for or voluntarily excluded from the covered transaction.

(b) Violation of the restriction under paragraph (a) of this section may result in disallowance of costs, annulment or termination of award, issuance of a stop work order, debarment or suspension, or other remedies as appropriate.

(c) A participant may rely upon the certification of a prospective participant in a lower tier covered transaction that it and its principals are not debarred, suspended, proposed for debarment under 48 CFR part 9, subpart 9.4, ineligible, or voluntarily excluded from the covered transaction (See appendix B of these regulations), unless it knows that the certification is erroneous. An agency has the burden of proof that a participant did knowingly do business with a person that filed an erroneous certification.

[60 FR 33041, 33059, June 26, 1995]

**Subpart C--Debarment**

**Sec. 32.300 General.**

The debarring official may debar a person for any of the causes in Sec. 32.305, using procedures established in Secs. 32.310 through 32.314. The existence of a cause for debarment, however, does not necessarily require that the person be debarred; the seriousness of the person's acts or omissions and any mitigating factors shall be considered in making any debarment decision.

**Sec. 32.305 Causes for debarment.**

Debarment may be imposed in accordance with the provisions of Secs. 32.300 through 32.314 for:

(a) Conviction of or civil judgment for:

(1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction;

(2) Violation of Federal or State antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging;

(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, or obstruction of justice; or

(4) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a person.

(b) Violation of the terms of a public agreement or transaction so serious as to affect the integrity of an agency program, such as:

(1) A willful failure to perform in accordance with the terms of one or more public agreements or transactions;

(2) A history of failure to perform or of unsatisfactory performance of one or more public agreements or transactions; or

(3) A willful violation of a statutory or regulatory provision or requirement applicable to a public agreement or transaction.

(c) Any of the following causes:

(1) A nonprocurement debarment by any Federal agency taken before October 1, 1988, the effective date of these regulations, or a procurement debarment by any Federal agency taken pursuant to 48 CFR subpart 9.4;

(2) Knowingly doing business with a debarred, suspended, ineligible, or voluntarily excluded person, in connection with a covered transaction, except as permitted in Secs. 32.215 or 32.220;

(3) Failure to pay a single substantial debt, or a number of outstanding debts (including disallowed costs and overpayments, but not including sums owed the Federal Government under the Internal Revenue Code) owed to any Federal agency or

instrumentality, provided the debt is uncontested by the debtor or, if contested, provided that the debtor's legal and administrative remedies have been exhausted;

(4) Violation of a material provision of a voluntary exclusion agreement entered into under Sec. 32.315 or of any settlement of a debarment or suspension action; or

(5) Violation of any requirement of subpart F of this part, relating to providing a drug-free workplace, as set forth in Sec. 32.615 of this part.

(d) Any other cause of so serious or compelling a nature that it affects the present responsibility of a person.

[53 FR 19196, 19204, May 26, 1988, as amended at 54 FR 4962, Jan. 31, 1989]

**Sec. 32.310 Procedures.**

EPA shall process debarment actions as informally as practicable, consistent with the principles of fundamental fairness, using the procedures in Secs. 32.311 through 32.314.

**Sec. 32.311 Investigation and referral.**

Information concerning the existence of a cause for debarment from any source shall be promptly reported, investigated, and referred, when appropriate, to the debarring official for consideration. After consideration, the debarring official may issue a notice of proposed debarment.

The requirements of Subpart F and Appendix C to Part 32 do not apply to KPWSLF projects



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**Sec. 32.312 Notice of proposed debarment.**

A debarment proceeding shall be initiated by notice to the respondent advising:

- (a) That debarment is being considered;
- (b) Of the reasons for the proposed debarment in terms sufficient to put the respondent on notice of the conduct or transaction(s) upon which it is based;
- (c) Of the cause(s) relied upon under Sec. 32.305 for proposing debarment;
- (d) Of the provisions of Sec. 32.311 through Sec. 32.314, and any other EPA procedures, if applicable, governing debarment decision making; and
- (e) Of the potential effect of a debarment.

**Sec. 32.313 Opportunity to contest proposed debarment.**

(a) Submission in opposition. Within 30 days after receipt of the notice of proposed debarment, the respondent may submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment.

(1) If the respondent desires a hearing, it shall submit a written request to the debarring official within the 30-day period following receipt of the notice of proposed debarment.

(2) [Reserved]

(b) Additional proceedings as to

disputed material facts. (1) In actions not based upon a conviction or civil judgment, if the debarring official finds that the respondent's submission in opposition raises a genuine dispute over facts material to the proposed debarment, respondent(s) shall be afforded an opportunity to appear with a representative, submit documentary evidence, present witnesses, and confront any witness the agency presents.

(2) A transcribed record of any additional proceedings shall be made available at cost to the respondent, upon request, unless the respondent and the agency, by mutual agreement, waive the requirement for a transcript.

[53 FR 19196, 19204, May 26, 1988, as amended at 53 FR 19197, May 26, 1988]

**Sec. 32.314 Debarring official's decision.**

(a) No additional proceedings necessary. In actions based upon a conviction or civil judgment, or in which there is no genuine dispute over material facts, the debarring official shall make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless the debarring official extends this period for good cause.

(b) Additional proceedings necessary. (1) In actions in which additional proceedings are necessary to determine disputed material facts, written findings of fact shall be prepared. The debarring official shall base the decision on the facts as found, together with any information and argument submitted by the respondent and any other information in the administrative record.

(2) The debarring official may refer disputed material facts to another official for findings of fact. The debarring official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary and capricious or clearly erroneous.

(3) The debarring official's decision shall be made after the conclusion of the proceedings with respect to disputed facts.

(c)(1) Standard of proof. In any debarment action, the cause for debarment must be established by a preponderance of the evidence. Where the proposed debarment is based upon a conviction or civil judgment, the standard shall be deemed to have been met.

(2) Burden of proof. The burden of proof is on the agency proposing debarment.

(d) Notice of debarring official's decision. (1) If the debarring official decides to impose debarment, the respondent shall be given prompt notice:

(i) Referring to the notice of proposed debarment;

(ii) Specifying the reasons for debarment;

(iii) Stating the period of debarment, including effective dates; and

(iv) Advising that the debarment is effective for covered transactions throughout the executive branch of the Federal Government unless an agency head or an authorized designee makes the determination referred to in Sec. 32.215.

(2) If the debarring official decides not to impose debarment, the respondent shall be given prompt notice of that decision. A decision not to impose debarment shall be without prejudice to a subsequent imposition of debarment by any other agency.

**Sec. 32.315 Settlement and voluntary exclusion.**

(a) When in the best interest of the Government, EPA may, at any time, settle a debarment or suspension action.

(1) The debarring and suspending official is the official authorized to settle debarment or suspension actions.

(2) [Reserved]

(b) If a participant and the agency agree to a voluntary exclusion of the participant, such voluntary exclusion shall be entered on the Nonprocurement List (see subpart E).

(c) The EPA Debarring Official may consider matters regarding present responsibility, as well as any other matter regarding the conditions giving rise to alleged CAA or CWA violations in anticipation of entry of a plea,

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judgment or conviction. If, at any time, it is in the interest of the United States to conclude such matters pursuant to a comprehensive settlement agreement, the EPA Debarring Official may conclude the debarment and ineligibility matters as part of any such settlement, so long as he or she certifies that the condition giving rise to the CAA or CWA violation has been corrected.

[53 FR 19196, 19204, May 26, 1988, as amended at 53 FR 19197, May 26, 1988; 61 FR 28757, June 6, 1996]

**Sec. 32.320 Period of debarment.**

(a) Debarment shall be for a period commensurate with the seriousness of the cause(s). If a suspension precedes a debarment, the suspension period shall be considered in determining the debarment period.

(1) Debarment for causes other than those related to a violation of the requirements of subpart F of this part generally should not exceed three years. Where circumstances warrant, a longer period of debarment may be imposed.

(2) In the case of a debarment for a violation of the requirements of subpart F of this part (see Sec. 32.305(c)(5)), the period of debarment shall not exceed five years.

(b) The debarring official may extend an existing debarment for an additional period, if that official determines that an extension is necessary to protect the public interest. However, a debarment may not be extended solely on the basis

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of the facts and circumstances upon which the initial debarment action was based. If debarment for an additional period is determined to be necessary, the procedures of Secs. 32.311 through 32.314 shall be followed to extend the debarment.

(c) The respondent may request the debarring official to reverse the debarment decision or to reduce the period or scope of debarment. Such a request shall be in writing and supported by documentation. The debarring official may grant such a request for reasons including, but not limited to:

(1) Newly discovered material evidence;

(2) Reversal of the conviction or civil judgment upon which the debarment was based;

(3) Bona fide change in ownership or management;

(4) Elimination of other causes for which the debarment was imposed; or

(5) Other reasons the debarring official deems appropriate.

[53 FR 19196, 19204, May 26, 1988, as amended at 54 FR 4962, Jan. 31, 1989]

**Sec. 32.321 Reinstatement of facility eligibility.**

(a) A written petition to reinstate the eligibility of a CAA or CWA ineligible facility may be submitted to the EPA Debarring Official. The petitioner bears the burden of providing sufficient information and documentation to establish, by a preponderance of the

evidence, that the condition giving rise to the CAA or CWA conviction has been corrected.

If the material facts set forth in the petition are disputed, and the Debarring Official denies the petition, the petitioner shall be afforded the opportunity to have additional proceedings as provided in Sec. 32.314(b).

(b) A decision by the EPA Debarring Official denying a petition for reinstatement may be appealed under Sec. 32.335.

[61 FR 28757, June 6, 1996]

**Sec. 32.325 Scope of debarment.**

(a) Scope in general. (1) Debarment of a person under these regulations constitutes debarment of all its divisions and other organizational elements from all covered transactions, unless the debarment decision is limited by its terms to one or more specifically identified individuals, divisions or other organizational elements or to specific types of transactions.

(2) The debarment action may include any affiliate of the participant that is specifically named and given notice of the proposed debarment and an opportunity to respond (see Secs. 32.311 through 32.314).

(b) Imputing conduct. For purposes of determining the scope of debarment, conduct may be imputed as follows:

(1) Conduct imputed to participant. The fraudulent, criminal or other

seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with a participant may be imputed to the participant when the conduct occurred in connection with the individual's performance of duties for or on behalf of the participant, or with the participant's knowledge, approval, or acquiescence. The participant's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

(2) Conduct imputed to individuals associated with participant. The fraudulent, criminal, or other seriously improper conduct of a participant may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the participant who participated in, knew of, or had reason to know of the participant's conduct.

(3) Conduct of one participant imputed to other participants in a joint venture. The fraudulent, criminal, or other seriously improper conduct of one participant in a joint venture, grant pursuant to a joint application, or similar arrangement may be imputed to other participants if the conduct occurred for or on behalf of the joint venture, grant pursuant to a joint application, or similar arrangement may be imputed to other participants if the conduct occurred for or on behalf of the joint venture, grant pursuant to a joint application, or similar arrangement or with the knowledge, approval, or acquiescence of these participants. Acceptance of the benefits

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derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

**Sec. 32.335 Appeal.**

(a) The debarment determination under Sec. 32.314 shall be final. However, any party to the action may request the Director, Office of Grants and Debarment (OGD Director), to review the findings of the Debarring Official by filing a request with the OGD Director within 30 calendar days of the party's receipt of the debarment determination, or its reconsideration. The request must be in writing and set forth the specific reasons why relief should be granted.

(b) A review under this section shall be at the discretion of the OGD Director. If a review is granted, the debarring official may stay the effective date of a debarment order pending resolution of the appeal. If a debarment is stayed, the stay shall be automatically lifted if the OGD Director affirms the debarment.

(c) The review shall be based solely upon the record. The OGD Director may set aside a determination only if it is found to be arbitrary, capricious, and abuse of discretion, or based upon a clear error of law.

(d) The OGD Director's subsequent determination shall be in writing and mailed to all parties.

(e) A determination under Sec. 32.314 or a review under this section shall not be subject to a dispute or a bid

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protest under parts 30, 31 or 33 of this subchapter.

[53 FR 19197, May 26, 1988, as amended at 59 FR 50693, Oct. 5, 1994; 62 FR 47149, Sept. 8, 1997]

**Subpart D--Suspension**

**Sec. 32.400 General.**

(a) The suspending official may suspend a person for any of the causes in Sec. 32.405 using procedures established in Secs. 32.410 through 32.413.

(b) Suspension is a serious action to be imposed only when:

(1) There exists adequate evidence of one or more of the causes set out in Sec. 32.405, and

(2) Immediate action is necessary to protect the public interest.

(c) In assessing the adequacy of the evidence, the agency should consider how much information is available, how credible it is given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result. This assessment should include an examination of basic documents such as grants, cooperative agreements, loan authorizations, and contracts.

**Sec. 32.405 Causes for suspension.**

(a) Suspension may be imposed in accordance with the provisions of Secs.

32.400 through 32.413 upon adequate evidence:

(1) To suspect the commission of an offense listed in Sec. 32.305(a); or

(2) That a cause for debarment under Sec. 32.305 may exist.

(b) Indictment shall constitute adequate evidence for purposes of suspension actions.

**Sec. 32.410 Procedures.**

(a) Investigation and referral. Information concerning the existence of a cause for suspension from any source shall be promptly reported, investigated, and referred, when appropriate, to the suspending official for consideration. After consideration, the suspending official may issue a notice of suspension.

(b) Decision making process. EPA shall process suspension actions as informally as practicable, consistent with principles of fundamental fairness, using the procedures in Sec. 32.411 through Sec. 32.413.

**Sec. 32.411 Notice of suspension.**

When a respondent is suspended, notice shall immediately be given:

(a) That suspension has been imposed;

(b) That the suspension is based on an indictment, conviction, or other adequate evidence that the respondent has committed irregularities seriously reflecting on the propriety of further Federal Government dealings with the

respondent;

(c) Describing any such irregularities in terms sufficient to put the respondent on notice without disclosing the Federal Government's evidence;

(d) Of the cause(s) relied upon under Sec. 32.405 for imposing suspension;

(e) That the suspension is for a temporary period pending the completion of an investigation or ensuing legal, debarment, or Program Fraud Civil Remedies Act proceedings;

(f) Of the provisions of Sec. 32.411 through Sec. 32.413 and any other EPA procedures, if applicable, governing suspension decision making; and

(g) Of the effect of the suspension.

**Sec. 32.412 Opportunity to contest suspension.**

(a) Submission in opposition. Within 30 days after receipt of the notice of suspension, the respondent may submit, in person, in writing, or through a representative, information and argument in opposition to the suspension.

(1) If the respondent desires a hearing, it shall submit a written request to the suspending official within the 30-day period following receipt of the notice of suspension.

(2) [Reserved]

(b) Additional proceedings as to disputed material facts. (1) If the suspending official finds that the respondent's submission in opposition raises a genuine dispute over facts material to the suspension, respondent(s)

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shall be afforded an opportunity to appear with a representative, submit documentary evidence, present witnesses, and confront any witness the agency presents, unless:

(i) The action is based on an indictment, conviction or civil judgment, or

(ii) A determination is made, on the basis of Department of Justice advice, that the substantial interests of the Federal Government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced.

(2) A transcribed record of any additional proceedings shall be prepared and made available at cost to the respondent, upon request, unless the respondent and the agency, by mutual agreement, waive the requirement for a transcript.

[53 FR 19196, 19204, May 26, 1988, as amended at 53 FR 19197, May 26, 1988]

**Sec. 32.413 Suspending official's decision.**

The suspending official may modify or terminate the suspension (for example, see Sec. 32.320(c) for reasons for reducing the period or scope of debarment) or may leave it in force. However, a decision to modify or terminate the suspension shall be without prejudice to the subsequent imposition of suspension by any other agency or debarment by any agency.

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The decision shall be rendered in accordance with the following provisions:

(a) No additional proceedings necessary. In actions: based on an indictment, conviction, or civil judgment; in which there is no genuine dispute over material facts; or in which additional proceedings to determine disputed material facts have been denied on the basis of Department of Justice advice, the suspending official shall make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless the suspending official extends this period for good cause.

(b) Additional proceedings necessary. (1) In actions in which additional proceedings are necessary to determine disputed material facts, written findings of fact shall be prepared. The suspending official shall base the decision on the facts as found, together with any information and argument submitted by the respondent and any other information in the administrative record.

(2) The suspending official may refer matters involving disputed material facts to another official for findings of fact. The suspending official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary or capricious or clearly erroneous.

(c) Notice of suspending official's decision. Prompt written notice of the suspending official's decision shall be sent to the respondent.

**Sec. 32.415 Period of suspension.**

(a) Suspension shall be for a temporary period pending the completion of an investigation or ensuing legal, debarment, or Program Fraud Civil Remedies Act proceedings, unless terminated sooner by the suspending official or as provided in paragraph (b) of this section.

(b) If legal or administrative proceedings are not initiated within 12 months after the date of the suspension notice, the suspension shall be terminated unless an Assistant Attorney General or United States Attorney requests its extension in writing, in which case it may be extended for an additional six months. In no event may a suspension extend beyond 18 months, unless such proceedings have been initiated within that period.

(c) The suspending official shall notify the Department of Justice of an impending termination of a suspension, at least 30 days before the 12-month period expires, to give that Department an opportunity to request an extension.

**Sec. 32.420 Scope of suspension.**

The scope of a suspension is the same as the scope of a debarment (see Sec.

32.325), except that the procedures of Secs. 32.410 through 32.413 shall be used in imposing a suspension.

**Sec. 32.430 Appeal.**

(a) The suspension determination under Sec. 32.413 shall be final. However, any party to the action may request the Director, Office of Grants and Debarment (OGD Director), to review the findings of the suspending official by filing a request with the OGD Director within 30 calendar days of the party's receipt of the suspension determination, or its reconsideration. The request must be in writing and set forth the specific reasons why relief should be granted.

(b) A review under this section shall be at the discretion of the OGD Director. If a review is granted, the suspending official may stay the effective date of a suspension order pending resolution of appeal. If a suspension is stayed, the stay shall be automatically lifted if the OGD Director affirms the suspension.

(c) The review shall be based solely upon the record. The OGD Director may set aside a determination only if it is found to be arbitrary, capricious, an abuse of discretion, or based upon a clear error of law.

(d) The OGD Director's subsequent determination shall be in writing and mailed to all parties.

(e) A determination under Sec. 32.413 or a review under this section shall not be subject to a dispute or a bid

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protest under parts 30, 31, or 33 of this subchapter.

[53 FR 19197, May 26, 1988, as amended at 59 FR 50693, Oct. 5, 1994; 62 FR 47149, Sept. 8, 1997]

**Subpart E--Responsibilities of GSA, Agency and Participants**

**Sec. 32.500 GSA responsibilities.**

(a) In accordance with the OMB guidelines, GSA shall compile, maintain, and distribute a list of all persons who have been debarred, suspended, or voluntarily excluded by agencies under Executive Order 12549 and these regulations, and those who have been determined to be ineligible.

(b) At a minimum, this list shall indicate:

(1) The names and addresses of all debarred, suspended, ineligible, and voluntarily excluded persons, in alphabetical order, with cross-references when more than one name is involved in a single action;

(2) The type of action;

(3) The cause for the action;

(4) The scope of the action;

(5) Any termination date for each listing; and

(6) The agency and name and telephone number of the agency point of contact for the action.

**Sec. 32.505 EPA responsibilities.**

(a) The agency shall provide GSA

with current information concerning debarments, suspension, determinations of ineligibility, and voluntary exclusions it has taken. Until February 18, 1989, the agency shall also provide GSA and OMB with information concerning all transactions in which EPA has granted exceptions under Sec. 32.215 permitting participation by debarred, suspended, or voluntarily excluded persons.

(b) Unless an alternative schedule is agreed to by GSA, the agency shall advise GSA of the information set forth in Sec. 32.500(b) and of the exceptions granted under Sec. 32.215 within five working days after taking such actions.

(c) The agency shall direct inquiries concerning listed persons to the agency that took the action.

(d) Agency officials shall check the Nonprocurement List before entering covered transactions to determine whether a participant in a primary transaction is debarred, suspended, ineligible, or voluntarily excluded (Tel. #).

(e) Agency officials shall check the Nonprocurement List before approving principals or lower tier participants where agency approval of the principal or lower tier participant is required under the terms of the transaction, to determine whether such principals or participants are debarred, suspended, ineligible, or voluntarily excluded.

**Sec. 32.510 Participants' responsibilities.**

(a) Certification by participants in

primary covered transactions.

Each participant shall submit the certification in appendix A to this part for it and its principals at the time the participant submits its proposal in connection with a primary covered transaction, except that States need only complete such certification as to their principals. Participants may decide the method and frequency by which they determine the eligibility of their principals. In addition, each participant may, but is not required to, check the Nonprocurement List for its principals (Tel. #). Adverse information on the certification will not necessarily result in denial of participation. However, the certification, and any additional information pertaining to the certification submitted by the participant, shall be considered in the administration of covered transactions.

(b) Certification by participants in lower tier covered transactions. (1) Each participant shall require participants in lower tier covered transactions to include the certification in appendix B to this part for it and its principals in any proposal submitted in connection with such lower tier covered transactions.

(2) A participant may rely upon the certification of a prospective participant in a lower tier covered transaction that it and its principals are not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction by any Federal agency, unless it knows that the certification is erroneous. Participants may decide the method and frequency by which they determine the

eligibility of their principals. In addition, a participant may, but is not required to, check the Nonprocurement List for its principals and for participants (Tel. #).

(c) Changed circumstances regarding certification. A participant shall provide immediate written notice to EPA if at any time the participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. Participants in lower tier covered transactions shall provide the same updated notice to the participant to which it submitted its proposals.

**Subpart F--Drug-Free Workplace Requirements (Grants)**

Source: 55 FR 21688, 21701, May 25, 1990, unless otherwise noted.

**Sec. 32.600 Purpose.**

(a) The purpose of this subpart is to carry out the Drug-Free Workplace Act of 1988 by requiring that--

(1) A grantee, other than an individual, shall certify to the agency that it will provide a drug-free workplace;

(2) A grantee who is an individual shall certify to the agency that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance in conducting any activity with the grant.

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(b) Requirements implementing the Drug-Free Workplace Act of 1988 for contractors with the agency are found at 48 CFR subparts 9.4, 23.5, and 52.2.

**Sec. 32.605 Definitions.**

(a) Except as amended in this section, the definitions of Sec. 32.105 apply to this subpart.

(b) For purposes of this subpart--

(1) Controlled substance means a controlled substance in schedules I through V of the Controlled Substances Act (21 U.S.C. 812), and as further defined by regulation at 21 CFR 1308.11 through 1308.15;

(2) Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

(3) Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

(4) Drug-free workplace means a site for the performance of work done in connection with a specific grant at which employees of the grantee are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance;

(5) Employee means the employee of a grantee directly engaged in the performance of work under the grant,

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including:

(i) All direct charge employees;

(ii) All indirect charge employees, unless their impact or involvement is insignificant to the performance of the grant; and,

(iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the payroll; or employees of subrecipients or subcontractors in covered workplaces);

(6) Federal agency or agency means any United States executive department, military department, government corporation, government controlled corporation, any other establishment in the executive branch (including the Executive Office of the President), or any independent regulatory agency;

(7) Grant means an award of financial assistance, including a cooperative agreement, in the form of money, or property in lieu of money, by a Federal agency directly to a grantee. The term grant includes block grant and entitlement grant programs, whether or not exempted from coverage under the grants management government-wide common rule on uniform administrative requirements for grants and cooperative agreements. The term does not include technical assistance that provides services instead of money, or other

assistance in the form of loans, loan guarantees, interest subsidies, insurance, or direct appropriations; or any veterans' benefits to individuals, i.e., any benefit to veterans, their families, or survivors by virtue of the service of a veteran in the Armed Forces of the United States;

(8) Grantee means a person who applies for or receives a grant directly from a Federal agency (except another Federal agency);

(9) Individual means a natural person;

(10) State means any of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency of a State, exclusive of institutions of higher education, hospitals, and units of local government. A State instrumentality will be considered part of the State government if it has a written determination from a State government that such State considers the instrumentality to be an agency of the State government.

**Sec. 32.610 Coverage.**

(a) This subpart applies to any grantee of the agency.

(b) This subpart applies to any grant, except where application of this subpart would be inconsistent with the international obligations of the United States or the laws or regulations of a foreign government. A determination of such inconsistency may be made only by the agency head or his/her designee.

(c) The provisions of subparts A, B, C, D and E of this part apply to matters covered by this subpart, except where specifically modified by this subpart. In the event of any conflict between provisions of this subpart and other provisions of this part, the provisions of this subpart are deemed to control with respect to the implementation of drug-free workplace requirements concerning grants.

**Sec. 32.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.**

A grantee shall be deemed in violation of the requirements of this subpart if the agency head or his or her official designee determines, in writing, that--

(a) The grantee has made a false certification under Sec. 32.630;

(b) With respect to a grantee other than an individual--

(1) The grantee has violated the certification by failing to carry out the requirements of paragraphs (A) (a)-(g) and/or (B) of the certification (Alternate I to appendix C) or

(2) Such a number of employees of the grantee have been convicted of violations of criminal drug statutes for violations occurring in the workplace as to indicate that the grantee has failed to make a good faith effort to provide a drug-free workplace.

(c) With respect to a grantee who is an individual--

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(1) The grantee has violated the certification by failing to carry out its requirements (Alternate II to appendix C); or

(2) The grantee is convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity.

**Sec. 32.620 Effect of violation.**

(a) In the event of a violation of this subpart as provided in Sec. 32.615, and in accordance with applicable law, the grantee shall be subject to one or more of the following actions:

(1) Suspension of payments under the grant;

(2) Suspension or termination of the grant; and

(3) Suspension or debarment of the grantee under the provisions of this part.

(b) Upon issuance of any final decision under this part requiring debarment of a grantee, the debarred grantee shall be ineligible for award of any grant from any Federal agency for a period specified in the decision, not to exceed five years (see Sec. 32.320(a)(2) of this part).

**Sec. 32.625 Exception provision.**

The agency head may waive with respect to a particular grant, in writing, a suspension of payments under a grant, suspension or termination of a grant, or suspension or debarment of a grantee if the agency head determines that such a

waiver would be in the public interest. This exception authority cannot be delegated to any other official.

**Sec. 32.630 Certification requirements and procedures.**

(a)(1) As a prior condition of being awarded a grant, each grantee shall make the appropriate certification to the Federal agency providing the grant, as provided in appendix C to this part.

(2) Grantees are not required to make a certification in order to continue receiving funds under a grant awarded before March 18, 1989, or under a no-cost time extension of such a grant. However, the grantee shall make a one-time drug-free workplace certification for a non-automatic continuation of such a grant made on or after March 18, 1989.

(b) Except as provided in this section, all grantees shall make the required certification for each grant. For mandatory formula grants and entitlements that have no application process, grantees shall submit a one-time certification in order to continue receiving awards.

(c) A grantee that is a State may elect to make one certification in each Federal fiscal year. States that previously submitted an annual certification are not required to make a certification for Fiscal Year

1990 until June 30, 1990. Except as provided in paragraph (d) of this section, this certification shall cover all grants to all State agencies from any

Federal agency. The State shall retain the original of this statewide certification in its Governor's office and, prior to grant award, shall ensure that a copy is submitted individually with respect to each grant, unless the Federal agency has designated a central location for submission.

(d)(1) The Governor of a State may exclude certain State agencies from the statewide certification and authorize these agencies to submit their own certifications to Federal agencies. The statewide certification shall name any State agencies so excluded.

(2) A State agency to which the statewide certification does not apply, or a State agency in a State that does not have a statewide certification, may elect to make one certification in each Federal fiscal year. State agencies that previously submitted a State agency certification are not required to make a certification for Fiscal Year 1990 until June 30, 1990. The State agency shall retain the original of this State agency-wide certification in its central office and, prior to grant award, shall ensure that a copy is submitted individually with respect to each grant, unless the Federal agency designates a central location for submission.

(3) When the work of a grant is done by more than one State agency, the certification of the State agency directly receiving the grant shall be deemed to certify compliance for all workplaces, including those located in other State agencies.

(e)(1) For a grant of less than 30 days

performance duration, grantees shall have this policy statement and program in place as soon as possible, but in any case by a date prior to the date on which performance is expected to be completed.

(2) For a grant of 30 days or more performance duration, grantees shall have this policy statement and program in place within 30 days after award.

(3) Where extraordinary circumstances warrant for a specific grant, the grant officer may determine a different date on which the policy statement and program shall be in place.

**Sec. 32.635 Reporting of and employee sanctions for convictions of criminal drug offenses.**

(a) When a grantee other than an individual is notified that an employee has been convicted for a violation of a criminal drug statute occurring in the workplace, it shall take the following actions:

(1) Within 10 calendar days of receiving notice of the conviction, the grantee shall provide written notice, including the convicted employee's position title, to every grant officer, or other designee on whose grant activity the convicted employee was working, unless a Federal agency has designated a central point for the receipt of such notifications. Notification shall include the identification number(s) for each of the Federal agency's affected grants.

(2) Within 30 calendar days of receiving notice of the conviction, the

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grantee shall do the following with respect to the employee who was convicted.

(i) Take appropriate personnel action against the employee, up to and including termination, consistent with requirements of the Rehabilitation Act of 1973, as amended; or

(ii) Require the employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.

(b) A grantee who is an individual who is convicted for a violation of a criminal drug statute occurring during the conduct of any grant activity shall report the conviction, in writing, within 10 calendar days, to his or her Federal agency grant officer, or other designee, unless the Federal agency has designated a central point for the receipt of such notices. Notification shall include the identification number(s) for each of the Federal agency's affected grants.

(Approved by the Office of Management and Budget under control number 0991-0002)

**Appendix A to Part 32--  
Certification Regarding Debarment,  
Suspension, and Other  
Responsibility Matters--Primary  
Covered Transactions**

**Instructions for  
Certification**

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective

primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier

covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to



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the Federal Government, the department or agency may terminate this transaction for cause or default.

**Certification Regarding Debarment, Suspension, and Other Responsibility Matters--Primary Covered Transactions**

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year

period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

[60 FR 33042, 33059, June 26, 1995]

**Appendix B to Part 32--Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions**

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this

proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.

4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or

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debarment.

Certification Regarding Debarment,  
Suspension, Ineligibility and

Voluntary Exclusion--Lower Tier  
Covered Transactions

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

[60 FR 33042, 33059, June 26, 1995]

**Appendix C to Part 32--  
Certification Regarding Drug-  
Free Workplace  
Requirements**

Instructions for  
Certification

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which reliance is placed when the

agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free

Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. For grantees other than individuals, Alternate I applies.

4. For grantees who are individuals, Alternate II applies.

5. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

6. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).

7. If the workplace identified to the

agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph five).

8. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

Controlled substance means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

Employee means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All direct charge employees; (ii) All indirect charge employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) Temporary personnel and consultants who are directly engaged in the

performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

**Certification Regarding Drug-Free  
Workplace Requirements**

Alternate I. (Grantees Other  
Than Individuals)

A. The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about--

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

The requirements of Subpart F and Appendix C to Part 32 do not apply to KPWSLF projects

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(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will--

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted--

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended;

The requirements of Subpart F and Appendix C to Part 32 do not apply to KPWSLF projects

or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, State, zip code)

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Check ☐ if there are workplaces on file that are not identified here.

Alternate II. (Grantees Who Are Individuals)

(a) The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant;

(b) If convicted of a criminal drug

offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to every grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification number(s) of each affected grant.

[55 FR 21690, 21701, May 25, 1990]

Procedures for Implementation  
of Section 129 of Public Law 100-590  
Small Business Administration Reauthorization and  
Amendment Act of 1988  
(Rural Area Business Enterprise)

The following information must be contained in solicitation documents for all contracts and subcontracts for supplies, construction and services, including small purchases.

Each bidder/offeror must fully comply with the requirements of this procedure to award a fair share of subagreements to small rural area businesses. A small business in a rural area (SBRA) is a business entity meeting the definition of a small business as defined by the Small Business Administration, i.e., a profit-making concern, including its affiliates, which is independently owned and operated and not dominant in its field of operations, and qualified as a small business under the criteria and size standards set forth in 13 CFR 121, and is located and conducts its principal operation in a geographic area (county or parish) listed in the Small Business Administration's Listing of Non-Metropolitan Counties by States. (See attached list of applicable Kansas Counties.) The bidder/offeror commits itself to taking the affirmative steps contained herein. Bidder/offerors will take affirmative steps prior to submission of bids/proposals.

Affirmative Steps:

1. Placing Small Businesses in Rural Areas (SBRAs) on solicitation lists;
2. Making sure that SBRAs are solicited whenever they are potential sources;
3. Dividing total requirements, when economically feasible, into small tasks or quantities to permit maximum participation by SBRAs;
4. Establishing delivering schedules, where the requirements of work will permit, which would encourage participation by SBRAs;
5. Using the services of the Small Business Administration and Minority Business Development Agency of the U.S. Department of Commerce, as appropriate; and
6. Requiring the contractor to take the affirmative steps in subparagraphs 1. through 5. of this part if subcontracts are awarded.

### Determination of Compliance

It is to be noted that bidders/offerors must demonstrate compliance with this procedure in order to be deemed responsible. Demonstration of compliance shall include, but is not limited to, the following information:

1. Names, addresses and phone numbers of SBRAs expected to perform work;
2. Work to be performed by SBRAs;
3. Aggregate dollar amount of work to be performed by SBRAs;
4. Description of contracts to SBRA organizations, agencies and associations which service SBRAs, including names of organization, agencies and associations and dates of contracts;
5. Description of contracts to SBRAs, including number of contracts, fields, (i.e. equipment or material supplier, excavators, transport services, electrical subcontractors, plumbers, etc.) and dates of contracts.

All bidders/offerors shall complete the Small Business Enterprise Utilization Worksheet and submit to the Municipality prior to contract award.

(Municipality may establish alternative methods of compliance equivalent to or more stringent than the above.)

RURAL-URBAN CONTINUUM CODE 1980

CODE\*

METROPOLITAN COUNTIES

- 0 Central counties of metropolitan areas of 1 million population or more
- 1 Fringe counties of metropolitan areas of 1 million population or more
- 2 Counties in metropolitan areas of 250 thousand to 1 million population
- 3 Counties in metropolitan areas of less than 250 thousand population

NONMETROPOLITAN COUNTIES

- 4 Urban population of 20,000 or more, adjacent to metropolitan area
- 5 Urban population of 20,000 or more, not adjacent to metropolitan area
- 6 Urban population of less than 20,000, adjacent to a metropolitan area
- 7 Urban population of less than 20,000 not adjacent to a metropolitan area
- 8 Completely rural, adjacent to a metropolitan area
- 9 Completely rural, not adjacent to a metropolitan area

NOTES: Metropolitan status is that announced by the Office of Management and Budget in June 1983, when the current population criteria were first applied to results of the 1980 Census. Adjacency was determined by physical boundary adjacency and a finding that at least 2 percent of the employed labor force in the nonmetropolitan county commuted to metropolitan central counties.

Codes prepared in Economic Development Division, Economic Research Services, USDA.

\* Only Codes 6 through 9 have been selected to use under the State Revolving Loan Fund Program.

KANSAS NON-METROPOLITAN  
RURAL COUNTIES

<u>County</u>	<u>Designation Number</u>	<u>Code</u>
ALLEN	20001	7
ANDERSON	20003	7
ATCHISON	20005	6
BARBER	20007	9
BOURBON	20011	7
BROWN	20013	7
CHASE	20017	9
CHAUTAUQUA	20019	9
CHEROKEE	20021	7
CHEYENNE	20023	9
CLARK	20025	9
CLAY	20027	7
CLOUD	20029	7
COFFEY	20031	7
COMANCHE	20033	9
DECATUR	20039	9
DICKINSON	20041	7
DONIPHAN	20043	9
EDWARDS	20047	9
ELK	20049	8
ELLIS	20051	7
ELLSWORTH	20053	9
FINNEY	20055	7
FORD	20057	7
FRANKLIN	20059	6
GOVE	20063	9
GRAHAM	20065	9
GRANT	20067	7
GRAY	20069	9
GREELEY	20071	9
GREENWOOD	20073	6
HAMILTON	20075	9
HARPER	20077	7
HARVEY	20079	6
HASKELL	20081	9
HODGEMAN	20083	9
JACKSON	20085	6
JEFFERSON	20087	8
JEWELL	20089	9
KEARNY	20093	9
KINGMAN	20095	6
KIOWA	20097	9
LABETTE	20099	7
LANE	20101	9
LINCOLN	20105	9
LINN	20107	8

<u>County</u>	<u>Designation Number</u>	<u>Code</u>
LOGAN	20109	9
MCPHERSON	20113	7
MARION	20115	6
MARSHALL	20117	7
MEADE	20119	9
MITCHELL	20123	7
MORRIS	20127	9
MORTON	20129	9
NEMAHA	20131	9
NEOSHO	20133	7
NESS	20135	9
NORTON	20137	7
OSAGE	20139	6
OSBORNE	20141	9
OTTAWA	20143	9
PAWNEE	20145	7
PHILLIPS	20147	7
POTTAWATOMIE	20149	6
PRATT	20151	7
RAWLINS	20153	9
REPUBLIC	20157	7
RICE	20159	7
ROOKS	20163	9
RUSH	20165	9
RUSSELL	20167	7
SCOTT	20171	7
SEWARD	20175	7
SHERIDAN	20179	9
SHERMAN	20181	7
SMITH	20183	9
STAFFORD	20185	9
STANTON	20187	9
STEVENS	20189	7
SUMNER	20191	6
THOMAS	20193	7
TREGO	20195	9
WABAUNSEE	20197	8
WALLACE	20199	9
WASHINGTON	20201	9
WICHITA	20203	9
WILSON	20205	7
WOODSON	20207	9



KANSAS PUBLIC WATER SUPPLY LOAN FUND  
SMALL BUSINESS ENTERPRISE UTILIZATION WORKSHEET

Loan Recipient \_\_\_\_\_  
Project No. \_\_\_\_\_  
Contractor/Engineer \_\_\_\_\_  
Address \_\_\_\_\_  
Contact Person: \_\_\_\_\_ Telephone No. \_\_\_\_\_  
Amount of Contract \_\_\_\_\_ SBRA Percentage \_\_\_\_\_

1. SBRA Subcontractor \_\_\_\_\_  
Address \_\_\_\_\_  
Contact Person \_\_\_\_\_ Telephone No. \_\_\_\_\_  
Amount of Subcontract \_\_\_\_\_  
Scope of Work \_\_\_\_\_

2. SBRA Subcontractor \_\_\_\_\_  
Address \_\_\_\_\_  
Contact Person \_\_\_\_\_ Telephone No. \_\_\_\_\_  
Amount of Subcontract \_\_\_\_\_  
Scope of Work \_\_\_\_\_

3. SBRA Subcontractor \_\_\_\_\_  
Address \_\_\_\_\_  
Contact Person \_\_\_\_\_ Telephone No. \_\_\_\_\_  
Amount of Subcontract \_\_\_\_\_  
Scope of Work \_\_\_\_\_

4. SBRA Subcontractor \_\_\_\_\_  
Address \_\_\_\_\_  
Contact Person \_\_\_\_\_ Telephone No. \_\_\_\_\_  
Amount of Subcontract \_\_\_\_\_  
Scope of Work \_\_\_\_\_

5. SBRA Subcontractor \_\_\_\_\_  
Address \_\_\_\_\_  
Contact Person \_\_\_\_\_ Telephone No. \_\_\_\_\_  
Amount of Subcontract \_\_\_\_\_  
Scope of Work \_\_\_\_\_

Comments

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Prepared by \_\_\_\_\_ Telephone No. \_\_\_\_\_ Date \_\_\_\_\_  
(Use additional copies of this sheet if needed)

APPLICANT ASSURANCE WITH RESPECT TO  
AFFIRMATIVE STEPS FOR SBRA UTILIZATION

I hereby certify that with reference to Water Supply/Treatment/Distribution Project Number \_\_\_\_\_, I have reviewed the affirmative steps made by the consultant(s)/contractor(s) in relation to SBRA utilization and find that the steps satisfy the requirements set out in the KPWSLF Implementation Procedures. Attached is the appropriate documentation to support this assurance.

\_\_\_\_\_  
Authorized Representative of Applicant

\_\_\_\_\_  
Date

\_\_\_\_\_  
Legal Name of Applicant



**KANSAS**  
**DEPARTMENT OF HEALTH & ENVIRONMENT**  
**DIVISION OF ENVIRONMENT**  
**BUREAU OF WATER**

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**KANSAS PUBLIC WATER SUPPLY LOAN FUND**  
**DISADVANTAGED BUSINESS ENTERPRISE**  
**INFORMATION SHEET**

July 2, 1998

The administrative provisions of the Federal Fiscal Year 1991 Appropriations Act require the State Revolving Fund programs make a minimum 8% "Fair Share" of Federal Funds available to "Disadvantaged Business Enterprise" (DBE) firms. By acceptance of the Federal Fiscal Year 1991 and all subsequent Capitalization Grants, the Kansas Department of Health and Environment (KDHE) must comply with Special Conditions of these awards regarding "Disadvantaged Business Enterprise" Utilization. KDHE agrees to insure to the fullest extent possible that federal funds for prime contracts or subcontracts for supplies, construction, equipment or services are made available to organization owned or controlled by socially or economically disadvantaged individuals, women, and historically black colleges and universities. This DBE Utilization requirement will apply to all future capitalization grants, therefore these DBE Utilization requirements will now apply to all Kansas Public Water Supply Loan Fund (KPWSLF) projects. This information sheet explains requirements of the KPWSLF for DEB utilization. A copy of this Information Sheet must be included within engineering contracts for construction services and within the contract documents of construction specifications.

A Disadvantaged Business Enterprise is defined as a business concern owned or controlled by socially disadvantaged and economically disadvantaged individuals. The socially disadvantaged individual must have a minimum of 51 percent ownership, control, and active daily measurement of the business concern to meet this criterion.

Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities, and are further defined as:

Black Americans	Asian Pacific Americans
Hispanic Americans	Native Hawaiian Organizations
Native Americans	Women
Indian Tribes	Historically Black Colleges and Universities

Economically disadvantaged individuals are those socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital or credit opportunities, as compared to others in the same business area who are not socially disadvantaged. In determining the degree of diminished credit and capital opportunities, the U.S. Small Business Administration (SBA) shall consider, but not be limited to, the assets and net worth of such socially disadvantaged individuals.

The DBE program is a self-certification program, and so an SBA “determination” is not required, but can be obtained. Any questions regarding the economically disadvantaged aspect of this DBE program can be directed to:

U.S. Small Business Administration  
Minority Enterprise Development Division  
Wichita District Office    Kansas City District Office  
316/269-6566                      816/374-6815

Several lists of MBE/WBE firms and/or DBE firms are available:

The Kansas Department of Transportation Directory of Disadvantaged Business Enterprise (DBE) and the Kansas Department of Commerce & Housing Minority & Women Owned Business Directory are available by contacting the Bureau of Water Administrative Unit, at 785/296-5534. These listings may also be obtained at the following web sites : **[www.ink.org/public/kdot/business/dbe.htm](http://www.ink.org/public/kdot/business/dbe.htm)** and **[http://kdoch.state.ks.us:80/KDOCHdocs/BD/Minority\\_and\\_Women\\_Owned\\_Business\\_Directory.pdf](http://kdoch.state.ks.us:80/KDOCHdocs/BD/Minority_and_Women_Owned_Business_Directory.pdf)**.

A current listing of small or small disadvantaged business concerns within the four state regional area (Kansas, Missouri, Iowa and Nebraska) is available by contacting either Mr. Marlin Francksen, Supervisor, Government Contracting, Mr. David Turner, Commercial Market Representative or Ms. Christine Sadri, Government Contracting Assistant with the Small Business Administration Office at 816/374-6815. The Small Business Administration Office for the four state area is located at 323 West 8th, Suite 501, Kansas City, Missouri 64105. As previously indicated, an existing company may self-certify as a Disadvantaged Business Enterprise with the SBA. The Small Business Administration encourages the individual municipality, consulting engineer, and/or construction contractor to contact them directly to discuss the individual project and the opportunity for small and small Disadvantaged Business Enterprise firms utilization. The SBA manages the Pronet System ([www.SBA.Gov](http://www.SBA.Gov)) which provides information by geographical area, trade, profession, and type of ownership. This listing includes only Asmall” business, as defined by SBA.

Listings of DBE firms are also available from the Minority Business Development Agencies (MBDA) and Centers of the U.S. Department of Commerce. The MBDA manages the PROFILE computer data file, designed to match minority firms with construction, manufacturing, service, and research contract opportunities. Information is available by contacting Mr. David Vega, MBDA Regional Director, 55 E. Monroe Street, Suite 1406, Chicago, Illinois 80603, at 312/353-0182.

Historically Black Colleges and Universities (HBCU) are identified by the Department of Education listing of minority colleges and universities. A copy of this listing is available also by contacting the Bureau of Water Administration Unit, at 785/296-5534.

This information is intended as a resource reference only and not intended to restrict or limit contact with other disadvantaged business.

Engineering firms and construction contractors must report utilization of Disadvantaged Business Enterprises, and must provide documentation of all efforts to obtain and utilize these business concerns on the Minority and Women's Disadvantaged Business Enterprise Utilization Worksheet (Appendix E-4), to the municipality for review and acceptance. The municipality is required to submit a copy of this information to KDHE as well as submit the Applicant Assurance with Respect to Affirmative Steps for MBE/WBE DBE Utilization (Appendix E-5), and the MBE/WBE Utilization under Federal Grants, Cooperative Agreements, and Interagency Agreements, EPA Form 5700-52A (Appendix E-6). The information reported utilizing these forms must be expanded to present the Socially Disadvantaged aspect of the business concern, for example Black American, Women-Owned, HCBU, etc., rather than only MBE or WBE.

The Municipality is required to maintain copies of the Kansas Department of Transportation Directory of Disadvantaged Business Enterprises (DBE), the Kansas Department of Commerce & Housing Minority and Women Owned Business Directory, the Listing of Minority Colleges and Universities, and other sources available at City Hall (and other appropriate locations) for access by consultants, contractors, and suppliers during the bidding and construction phases. Any questions regarding these documents should be directed to the Bureau of Water Administration Unit, at 785/296-5534 .

## **40 CFR Ch. I**

### **Sec. 31.36 procurement.**

(e) *Contracting with small and minority firms, women's business enterprise and labor surplus area firms.* (1) The grantee and subgrantee will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

(2) Affirmative steps shall include:

(i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;

(iv) Establishing deliver schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;

(v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and

(iv) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (e)(2)(i) through (v) of this section.

Region VII Procurement for Implementation  
of 40 CFR Part 31.36(e)  
(Minority Business Enterprise/Women's Business Enterprise)\*

(The following information must be contained in solicitation documents for construction contracts and engineering agreements pursuant to 40 CFR Part 31.36(e).)

Each bidder/offeree must fully comply with the requirements, terms, conditions of EPA's policy to award a fair share of subagreements to minority and women's businesses. The bidder/offeree commits itself to taking affirmative steps contained herein. Bidders/offerees will take affirmative steps prior to submission of bids/proposals.

Affirmative Steps

1. When feasible, segmenting total work requirements to permit maximum MBE/WBE participation.
2. Assuring that MBEs and WBEs are solicited whenever they are potential sources of goods or services. This step may include:
  - a. Sending letters or making other personal contacts with MBEs and WBEs (e.g. those whose names appear on lists prepared by EPA or the grantee and other MBE/WBEs known to the bidder/offeree). MBEs and WBEs should be contacted when other potential subcontractors are contacted, within reasonable time (fifteen days) prior to bid submission or closing date for receipt of initial offers. Those letters or other contacts should communicate the following:
    - i. Specific description of the work to be subcontracted;
    - ii. How and where to obtain a copy of plans and specifications or other detailed information needed to prepare a detailed price quotation;
    - iii. Date the quotation is due to the bidder/offeree;
    - iv. Name, address, and phone number of the person in the bidder/offeree's firm whom the prospective MBE/WBE subcontractor should contact for additional information.

\*Adopted for use as a Kansas Public Water Supply Loan Fund document.

- b. Sending letters or making other personal contacts with local, State, federal and private agencies and MBE/WBE associations relevant to the project. Such contacts should provide the same information provided in the direct contacts to MBE and WBE firms.
3. Where feasible, establishing delivery schedules which will encourage participation by MBEs and WBEs.

Determination of Compliance

It is to be noted that bidders/offerors must demonstrate compliance with MBE/WBE requirements in order to be deemed responsible. Demonstration of compliance shall include, but is not limited to, the following information:

1. Names, addresses and phone numbers of MBE/WBEs expected to perform work;
2. Work to be performed by the MBEs and WBEs;
3. Aggregate dollar amount of work to be performed by MBEs and WBEs, showing aggregate to MBEs and aggregate to WBEs separately;
4. Description of contracts to MBE and WBE organizations, agencies and associations which serve MBE/WBEs, including names of organizations, agencies and associations and dates of contacts;
5. Description of contacts to MBEs and WBEs, including number of contacts, fields, (i.e. equipment or material supplier, excavators, transport services, electrical subcontractors, plumbers, etc.) and dates of contacts.

All bidders/offerors should complete the Minority and Women's Business Enterprise Utilization Worksheet and submit to the grantee prior to contract award.

(Grantees may establish alternative methods of compliance equivalent to or more stringent than the above.)



KANSAS PUBLIC WATER SUPPLY LOAN FUND  
MINORITY AND WOMEN'S DISADVANTAGED BUSINESS ENTERPRISE  
UTILIZATION WORKSHEET

Loan Recipient \_\_\_\_\_  
Project No. \_\_\_\_\_  
Contractor/Engineer \_\_\_\_\_  
Address \_\_\_\_\_  
Contact Person: \_\_\_\_\_ Telephone No. \_\_\_\_\_  
Amount of Contract \_\_\_\_\_ MBE Percentage \_\_\_\_\_ WBE Percentage \_\_\_\_\_

1. MBE \_\_\_\_\_ Subcontractor/Supplier \_\_\_\_\_  
WBE \_\_\_\_\_ Address \_\_\_\_\_  
Contact Person \_\_\_\_\_ Telephone No. \_\_\_\_\_  
Amount of Subcontract \_\_\_\_\_  
Scope of Work \_\_\_\_\_

2. MBE \_\_\_\_\_ Subcontractor/Supplier \_\_\_\_\_  
WBE \_\_\_\_\_ Address \_\_\_\_\_  
Contact Person \_\_\_\_\_ Telephone No. \_\_\_\_\_  
Amount of Subcontract \_\_\_\_\_  
Scope of Work \_\_\_\_\_

3. MBE \_\_\_\_\_ Subcontractor/Supplier \_\_\_\_\_  
WBE \_\_\_\_\_ Address \_\_\_\_\_  
Contact Person \_\_\_\_\_ Telephone No. \_\_\_\_\_  
Amount of Subcontract \_\_\_\_\_  
Scope of Work \_\_\_\_\_

4. MBE \_\_\_\_\_ Subcontractor/Supplier \_\_\_\_\_  
WBE \_\_\_\_\_ Address \_\_\_\_\_  
Contact Person \_\_\_\_\_ Telephone No. \_\_\_\_\_  
Amount of Subcontract \_\_\_\_\_  
Scope of Work \_\_\_\_\_

5. MBE \_\_\_\_\_ Subcontractor/Supplier \_\_\_\_\_  
WBE \_\_\_\_\_ Address \_\_\_\_\_  
Contact Person \_\_\_\_\_ Telephone No. \_\_\_\_\_  
Amount of Subcontract \_\_\_\_\_  
Scope of Work \_\_\_\_\_

Comments \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Prepared by \_\_\_\_\_ Telephone No. \_\_\_\_\_  
Date \_\_\_\_\_

(Use additional copies of this sheet if needed)

APPLICANT ASSURANCE WITH RESPECT TO  
AFFIRMATIVE STEPS FOR MBE/WBE (DBE) UTILIZATION

I hereby certify that with reference to Water Supply/Treatment/Distribution Project No. \_\_\_\_\_, I have reviewed the affirmative steps made by the consultant(s)/contractor(s) in relation to MBE/WBE (DBE) utilization and find that the steps satisfy the requirements set out in K.A.R. 28-15-57. Attached is the appropriate documentation to support this assurance.

\_\_\_\_\_  
Authorized Representative of Applicant

\_\_\_\_\_  
Date

\_\_\_\_\_  
Legal Name of Applicant

**MBE/WBE UTILIZATION UNDER FEDERAL GRANTS, COOPERATIVE AGREEMENTS, AND OTHER FINANCIAL ASSISTANCE**

**PART I. (NEGATIVE REPORTS ARE REQUIRED)**

1A. FEDERAL FISCAL YEAR  20_____		1B. REPORTING QUARTER (Check Appropriate Box)  <input type="checkbox"/> 1 <sup>st</sup> (Oct-Dec) <input type="checkbox"/> 2 <sup>nd</sup> (Jan-Mar) <input type="checkbox"/> 3 <sup>rd</sup> (Apr-Jun) <input type="checkbox"/> 4 <sup>th</sup> (Jul-Sep) <input type="checkbox"/> Annual	
2. STATE FINANCIAL ASSISTANCE AGENCY: (Department, Agency, Bureau, Administering Office, Address)		3. REPORTING RECIPIENT (Name & Address)	
2A. REPORTING CONTACT	Phone	3A. Reporting Contact	Phone:
4A. FINANCIAL ASSISTANCE AGREEMENT I.D. NO.		4B. STATE FINANCIAL ASSISTANCE PROGRAM  State Revolving Fund Loan Program	
5A. TOTAL LOAN AMOUNT  \$		5B. TOTAL CONTRACT/PROCUREMENT AMOUNT THIS QUARTER \$	
		5C. RECIPIENTS MBE/WBE GOALS  MBE _____%      WBE _____%	
5D. ACTUAL MBE/WBE PROCUREMENT ACCOMPLISHED THIS REPORTING PERIOD  MBE \$                      WBE \$			5E. NEGATIVE REPORT (Check)  <input type="checkbox"/> See Instructions
6. COMMENTS			
7. NAME OF AUTHORIZED REPRESENTATIVE			TITLE
8. SIGNATURE OF AUTHORIZED REPRESENTATIVE                      DATE			

## MBE/WBE PROCUREMENTS MADE DURING QUARTER

## PART II

[illegible]

\*Type of product or service codes:

1 ' Agriculture	5 ' Transportation	9 ' Services	10 ' Other
2 ' Mining	6 ' Wholesale Trade	a ' Business Services	
3 ' Construction	7 ' Retail Trade	b ' Professional Services	
4 ' Manufacturing	8 ' finance, Insurance, Real Estate	c ' Repair Services	
	d ' Personal Services		

KDHE  
KPWSLF

## INSTRUCTIONS

### MBE/WBE UTILIZATION UNDER FEDERAL GRANTS, COOPERATIVE AGREEMENTS, AND INTERAGENCY AGREEMENTS EPA FORM 5700-52A

#### A. General Instructions:

MBE/WBE utilization is based on Executive Orders 11625, 12138, 12421, P.L. 102-389 and EPA Regulations Part 30 and 31. EPA Form 5700-52A must be completed by recipients of Federal grants, cooperative agreements, or other Federal financial assistance which involve procurement of supplies, equipment, construction or services to accomplish Federal assistance programs.

Recipients are required to report to EPA within one month following the end of each Federal fiscal year quarter or annually as in the agreement.

#### B. Definitions:

*Procurement* is the acquisition through order, purchase, lease or barter of supplies, equipment, construction or services needed to accomplish Federal assistance programs.

A *contract* is a written agreement between an EPA recipient and another party (other than another public agency) and any lower tier agreement for equipment, services, supplies, or construction necessary to complete the project. Includes personal and professional services, agreements with consultants, and purchase orders.

A *minority business enterprise (MBE)* is a business concern that is (1) at least 51 percent owned by one or more minority individuals, or, in the case of a publicly owned business, at least 51 percent of the stock is owned by one or more minority individuals; and (2) whose daily business operations are managed and directed by one or more of the minority owners.

U.S. citizenship is required. Recipients shall presume that minority individuals include Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, or other groups whose member are found to be disadvantaged by the Small Business Act or by the Secretary of Commerce under section 5 of Executive order 11625. The reporting

contact at EPA can provide additional information.

A *woman business enterprise (WBE)* is a business concern that is, (1) at least 51 percent owned by one or more women, or, in the case of a public owned business, at least 51 per cent of the stock is owned by one or more women and (2) whose daily business operations are managed and directed by one or more of the women owners.

Business firms which are 51 percent owned by minorities or women, but are in fact managed and operated by non-minority individuals do not qualify for meeting MBE/WBE procurement goals.

The following affirmative steps for utilizing MBEs and WBEs are required to be documented:

1. Inclusion of MBEs/WBEs on solicitation lists.
2. Assure MBEs/WBEs are solicited once they are identified.
3. Where feasible, divide total requirements into smaller tasks to permit maximum MBE/WBE participation.
4. Where feasible, establish delivery schedules which will encourage MBE/WBE participation.
5. Encourage use of the services of the U.S. Department of Commerce's Minority Business Development Agency (MBDA) and the U.S. Small Business Administration to identify MBEs/WBEs.
6. Require that each party to a subgrant, subagreement, or contract award take the affirmative steps outlined here.

#### C. Instructions for Part I:

1. Complete Federal fiscal year and check applicable

reporting box quarterly or annually. (Federal fiscal year runs from October 1 through September 30.)

2. **“Will be provided by EPA.”**

3. Identify the agency, state authority, university or other organization which is the recipient of the Federal financial assistance and the person to contact concerning this report.
- 4a. Grant/cooperative agreement or Interagency Agreement number assigned by EPA.
- 4b. Refer back to grant document for this information.
- 5a. Total grant amount which includes Federal funds plus recipient matching funds and funds from other sources.
- 5b. Total contracts/procurements awarded this quarter. For example: Actual dollars for procurement from the procuring office; actual contracts let from the contracts office; actual goods, services, supplies, etc., from other sources including the central purchasing/procurement centers.
- 5c. Portion of total procurement dollars recipient plans to spend with MBEs or WBEs this fiscal year. With the concurrence of EPA, a fair share goal should be determined by each recipient.
- 5d. Dollar amount of all MBE/WBE procurement amount awarded under this reporting period. (These amounts include the Federal, State, and local shares in the procurement awards.)
- 5e. Check only if no procurements were made this reporting period. (If dollar amounts are shown in 5b. indicate reason in 6. Comments Section.)
6. Additional comments or explanation. Please refer to specific item number(s) if appropriate.
7. Name and title of official administrator or designated reporting official.
8. Signature and month, day, and year report submitted.

**D. Instructions for Part II:**

For each MBE/WBE procurement made under this assistance agreement during the reporting period, provide the following information:

1. Check whether this is a *first tier* procurement made directly by Federal financial assistance recipient or other *second tier* procurement made by recipient's subgrantee or prime contractor. Include all qualifying second tier purchases executed this quarter regardless of when the first tier procurement occurred.
2. Check MBE or WBE.
3. Dollar value of procurement.
4. Date of award, shown as month, day, year.
5. Using codes at the bottom of the form, identify type of product or service acquired through this procurement (e.g., enter 1 if agriculture, 2 if mining, etc.).
6. Name and address of MBE/WBE firm.

This data is requested to comply with provisions mandated by: statute or regulations (40 CFR Part 30 and 31); OMB Circulars; or added by EPA to ensure sound and effective assistance management. Accurate, complete data are required to obtain funding, while no pledge of confidentiality is provided.

The public reporting and recording burden for this collection of information is estimated to average 1 hour per response annually. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclosure or provide information to or for the Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

**Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, OPPE Regulatory Information Division, U.S. Environmental Protection Agency (2136), 401 M Street, S.W., Washington, D.C. 20460. Indicate the OMB Control number in any correspondence. Do not send the completed form to this address.**

SPECIFICATION REVIEW GUIDANCE CHECKLIST  
KPWSLF PROJECTS

Project Name \_\_\_\_\_

Project No. \_\_\_\_\_

Reviewer \_\_\_\_\_

Date \_\_\_\_\_

\_\_\_\_\_ (A) Advertising Time (Policy)

Required Statements in Advertisement for Bids

\_\_\_\_\_ (B) Nondiscrimination in Advertisement (K.S.A. 44-1001 et. seq., K.S.A. 44-1111 et. seq.)

Special Forms or Attachments

\_\_\_\_\_ (F) Anti-Discrimination clause (K.S.A. 44-1001 et. seq., K.S.A. 44-1111 et. seq.)

\_\_\_\_\_ (G) Certification of Non-Segregated Facilities ( P.L. 88-352)

\_\_\_\_\_ (H) Equal Employment ( 41 CFR 60-4) (EPA Guidance)

\_\_\_\_\_ (I) Minority/Women (Disadvantaged) Business Enterprise (EPA Regulation 31.36)

\_\_\_\_\_ (J) Small Business in Rural Areas ( Public Law 100-590)

Other Required Items

\_\_\_\_\_ (K) 5% Bid Bond (Recommended)

\_\_\_\_\_ (L) Award of contract (Policy)

\_\_\_\_\_ (N) Definite completion time (Policy)

\_\_\_\_\_ (O) Right of Entry - EPA and KDHE (EPA Guidance)

\_\_\_\_\_ (P) 100% Performance Bond (Recommended)

\_\_\_\_\_ (Q) 100% Payment Bond (Recommended)

\_\_\_\_\_ (R) Historical and Archaeological [30.600(a)] (EPA Guidance)

\_\_\_\_\_ (X) Innovative/Alternative Performance (I/A/ projects only, EPA Guidance)

- \_\_\_\_\_ (Y) Innovative/Alternative Bid Proposal (I/A/ projects only, EPA Guidance)
- \_\_\_\_\_ (Z) Payment Provisions (Recommended)
- \_\_\_\_\_ (BB) Suspension and Debarment (Part 32) EPA Regulations (EPA Guidance)
- \_\_\_\_\_ (CC) Advertisement for Bids must include a statement that debarred or suspended firms must not be employed on this project. (EPA Guidance)
- \_\_\_\_\_ (DD) A certification statement must be included in the bid documents for the contractor to certify that they are not in the EPA master list of debarred and suspended parties. (EPA Guidance)
- \_\_\_\_\_ (EE) If Arbitration is included in the specifications, KDHE recommends disputes proceed to binding arbitration only by Mutual Consent. (Recommended)
- \_\_\_\_\_ (HH) State and Local Laws, Ordinances, and Restrictions.
- \_\_\_\_\_ Special paragraphs attached



KANSAS PUBLIC WATER SUPPLY LOAN FUND PROJECTS  
SPECIFICATION REVIEW GUIDANCE CHECKLIST  
FOR EQUIPMENT CONTRACTS OF \$200,000 OR MORE

Project Name \_\_\_\_\_

Project No. \_\_\_\_\_

Reviewer \_\_\_\_\_

Date \_\_\_\_\_

\_\_\_\_\_ (A) Advertising Time (Policy)

\_\_\_\_\_ (B) Nondiscrimination in Advertisement (E.O. 11246)

\_\_\_\_\_ (F) Anti-Discrimination Provisions and Certification Form (K.S.A. 44-1001 et. seq.,  
and K.S.A. 44-1111 et. seq.)

\_\_\_\_\_ (G) Certification of Non-Segregated Facilities ( P.L. 88-352)

\_\_\_\_\_ (L) Award of contract (Policy)

\_\_\_\_\_ (N) Definite delivery time (Policy)

\_\_\_\_\_ (Z) Payment Provisions (Recommended)

\_\_\_\_\_ (BB) Suspension and Debarment (Part 32) EPA Regulations (EPA Guidance)

\_\_\_\_\_ (CC) Advertisement for Bids must include a statement that debarred or suspended  
firms must not be employed on this project. (EPA Guidance)

\_\_\_\_\_ (DD) A certification statement must be included in the bid documents for the  
contractor to certify that they are not in the EPA master list of debarred and  
suspended parties. (EPA Guidance)

\_\_\_\_\_ (HH) State and Local Laws, Ordinances, and Restrictions

## SRF PROJECT CONSTRUCTION CONTRACT ASSURANCES

A. Advertising Time - KDHE policy recommends the invitation for bids be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening of bids. Projects should be advertised for bids at least 30 days prior to bid opening. To allow ample time for bidders to comply with minority business enterprise requirements, it is suggested a period longer than 30 days be considered.

B. Nondiscrimination in Advertisement - The KDHE SRF program requires the following paragraph be contained in the "Advertisement for Bids" for this project:

## Nondiscrimination in Employment

"Bidders on this work, including sub-contractors or vendors, will be required to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et. seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et. seq.)".

C. Reserved

D. Reserved

E. Reserved

F. Anti-Discrimination - The KDHE SRF Program requires the following clause be contained in the "Information to Bidders" for this project:

"Bidders on this work, including sub-contractors or vendors, will be required to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et. seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et. seq.)".

The enclosed "Contract Provisions of Kansas Statute Annotated (K.S.A.) 44-1030 Kansas Act Against Discrimination" information sheet (Appendix G-1) and the "State of Kansas Act Against Discrimination Contract Revisions" certification form (Appendix G-2) must be included in the contract documents. The subject form (Appendix G-2) must be executed, a copy retained for your files and a copy submitted to KDHE prior to approval for contract award. This should be included as part of the contractor's bid submittal.

G. Certification of Non-Segregated Facilities - EPA procedures to implement the Civil Rights Act of 1964 (P.L. 88-352) require the "Certification of Nonsegregated Facilities" form be included in the specifications and submitted with the bid documents

H. Equal Employment Opportunity- 41 CFR 60-4 requires that Section 202 Equal Opportunity Clause, Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246) and Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246) be included in the contracts and subcontracts for all constructed contracts exceeding \$10,000.

I. Minority/Women's (Disadvantaged) Business Enterprise - MBE/WBE (DBE) - The Federal SRF program requires the following documents be included in the specifications: the KPWSLF Disadvantaged Business Enterprise Information Sheet (Appendix E-1), Section 31.36(e) of the March 11, 1988 EPA Procurement Regulations (Appendix E-2), Procedures for Implementing of MBE/WBE (Appendix E-3), and Minority and Women's Disadvantaged Business Enterprise Utilization Worksheet (Appendix E-4). All bidders must be required to submit a completed worksheet as part of their proposals.

J. Small Business in Rural Areas- The Federal SRF program requires the following documents be included in the specifications: Procedures for Implementing for use of Small Businesses in Rural Areas (Appendix D-1) and the SBRA Utilization Worksheet (Appendix D-2). All Bidders must be required to submit a completed worksheet as part of their proposals.

K. Bid Bond - KDHE recommends if the contract price is expected to exceed \$100,000, each bidder furnish a bid guarantee equivalent to 5 per cent of the bid. Contracts less than \$100,000 are subject to State and local requirements relating to bid guarantee.

L. Award of Contract - KDHE Policy requires the proposal fully explain the basis for determining the low bidder and include a statement that the contract will be awarded to the lowest responsive, responsible bidder.

M. Reserved

N. Completion Time - KDHE Policy suggests the specifications contain a provision for the maximum calendar or work days allowed for completion of the project.

O. Right of Entry - The Federal SRF program requires that right of entry to the project site be provided for representatives of the Kansas Department of Health and Environment, so they may have access to the work wherever it is in preparation or progress. A paragraph approximately as follows must be included in the specifications:

The successful bidder shall secure the right of entry to the project site for representatives of the Kansas Department of Health and Environment, so they may have access to the work whenever it is in preparation or progress and also to any books, documents, papers and records of the Contractor which are directly pertinent to that specific contract for the purpose of making audit, examinations, excerpts and transcriptions. Proper facilities and safe conditions must be provided for access and inspections, including advice regarding site safety procedures and programs to allow compliance.

P.Q. One Hundred Percent Performance and Payment Bonds - KDHE Policy suggests separate performance and payment bonds, each in the amount of 100 percent of the contract price, be required on construction contracts of \$100,000 or more. Use of the loan recipient's own bonding policies and requirements may be utilized but are subject to review and approval by KDHE.

R. Historical and Archeological - The Federal SRF program requires that a paragraph approximately as follows be included in the specifications:

If during the course of construction evidence of deposits of historical or archeological interest is found, the contractor shall cease operations affecting the find and shall notify the owner who shall notify the Kansas Department of Health and Environment and the Executive Director, Kansas State Historical Society, 6425 SW 6<sup>th</sup> Street, Topeka, Kansas 66615. No further disturbance of the deposits shall ensue until the contractor has been notified by the owner that he may proceed. The owner will issue a notice to proceed only after the State official has surveyed the find and made a determination to Kansas Department of Health and Environment and the owner. Compensation to the contractor, if any, for lost time or changes in construction to avoid the find, shall be determined in accordance with changed conditions or change order provisions of the specifications.

S. Reserved

T. Reserved

U. Reserved

V. Reserved

W. Reserved

X. Innovative/Alternative Performance - The specifications must clearly identify the performance required of the innovative/alternative portions of the project.

Y. Innovative/Alternative Bid Proposal - The bid proposal must include separate bid items for the innovative/alternative portions of the project.

Z. Payment Provisions - The KDHE SRF program demands prompt progress payments be made by the Recipient to contractors. Adequate provisions for such payments must be included in the specifications. Delays in payment to contractors for SRF-funded portions of the project may result in monetary penalty to the Recipient due to the "Rebate" requirements of Federal tax law.

AA. Reserved

BB. Debarred or Suspended Contractors- The EPA 40 CFR Part 32 regulations concerning debarment and suspension under EPA assistance programs must be included in the specifications.

CC. Advertisement for Bids must include the following statement:

A The prospective participants must certify by submittal of EPA Form 5700-49 "Certification Regarding Debarment, Suspension and Other Responsibility Matters" that, to the best of its knowledge and belief, it and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from transactions by any federal department or agency."

DD. A certification statement must be included in the bid documents for the contractor to certify that they are not on the EPA master list of debarred and suspended parties. The bid proposal must include the certification EPA form 5700-49 the contractor is not listed on the EPA Master List of Debarred and Suspended parties and the contractor will not use any subcontractors, suppliers, or individuals included on the EPA Master List.

EE. If Arbitration is included in the specifications, KDHE recommends disputes proceed to binding arbitration only by Mutual Consent.

FF. Reserved

GG. Reserved

HH. State and Local Laws, Ordinances, and Restrictions - The contract documents and specifications must be in compliance with all State and Local laws, ordinances, and restrictions.

II. NPDES General Permit Coverage for Discharges of Stormwater Runoff from Construction Activities - The owner or successful bidder must obtain, prior to construction, permit coverage from KDHE to discharge stormwater runoff associated with construction activity for most any project which disturbs one acre or more of soils. A Notice of Intent form (NOI) must be submitted to KDHE 60 days before the start of construction and a permit determination from KDHE must be made before construction can begin. The Kansas construction stormwater general permit, a Notice of Intent (application form), a frequently asked questions file, and supplemental materials are available on-line on the KDHE Stormwater Web Page at [www.kdhe.state.ks.us/stormwater](http://www.kdhe.state.ks.us/stormwater).

U.S. ENVIRONMENTAL PROTECTION AGENCY  
OFFICE OF POLICY AND MANAGEMENT

CERTIFICATION OF NONSEGREGATED FACILITIES

(Applicable to federally assisted construction contracts and related subcontracts exceeding \$10,000 which are not exempt from the Equal Opportunity clause.)

The federally assisted construction contractor certifies that he does not maintain or provide for his employees any segregated facilities at any of his establishments, and that he does not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. The federally assisted construction contractor certifies further that he will not maintain or provide for his employees any segregated facilities at any of his establishments, and that he will not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. The federally assisted construction contractor agrees that a breach of this certification is a violation of the Equal Opportunity clause in this contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, or national origin, because of habit, local custom, or otherwise. The federally assisted construction contractor agrees that (except where he has obtained identical certifications from proposed subcontractors for specific time periods) he will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause, and that he will retain such certifications in his files.

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Signature

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Date

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Name and Title of Signer (Please Type)

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Firm Name

NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

KDHE  
KPWSLF

## KANSAS PUBLIC WATER SUPPLY LOAN FUND

### Executive Order 11246 (Contracts/subcontracts above \$10,000)

(a) Section 202 Equal Opportunity Clause. During the performance of this contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisement for employees placed by or behalf of the Contractor, state that all qualified applicants will receive consideration without regard to race, color, religion, sex or national origin.

(3) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the Contract Compliance Officer advising the said labor union or workers' representatives of the contractor's commitment under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.

(5) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the Department and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and others.

(6) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, or by rule, regulations or order of the Secretary of Labor, or as otherwise provided by law.

(7) The Contractor will include the provisions of the sentence immediately preceding paragraph 1, and the provisions of paragraphs 1 through 7 in every subcontract or purchase order unless exempted by the rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each Subcontractor or Vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Department may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or Vendor as a result of such direction by the Department, the Contractor may request the United States to enter into such litigation to protect the interest of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in Federally-assisted construction work. Provided, that if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of Contractors and Subcontractors with the equal opportunity clause and the rules, regulations and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a Contractor debarred from, or who has not demonstrated eligibility for Government contracts and Federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon Contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D, of the Executive Order. In addition, the applicant agrees that if it fails or refuses to take any or all of the following actions: cancel, terminate or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurances of future compliance has been received from such applicant, and refer the case to the Department of Justice for appropriate legal proceedings.

(b) Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246). (Applicable to contracts/subcontracts exceeding \$10,000.)

(1) The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.

(2) The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate work force in each trade on all construction work in the covered area, are as follows:

Goals for Minority Participation	Goals for Female Participation
10.0%	6.9%



These goals are applicable to all the Contractor's construction work (whether or not it is Federal or Federally-assisted) performed in the covered area. If the Contractor performs construction work in a geographic area located outside the covered area, it shall apply the goals established for such geographic area where the work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both its federally involved and nonfederally involved construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3 (a), and its efforts to meet the goals established for the geographical area where the contract resulting from this solicitation is to be performed. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

(3) The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the Subcontractor; employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.

(4) As used in this Notice, and in the contract resulting from this solicitation, the "covered area" is \_\_\_\_\_.

(c) Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246).

(1) As used in these specifications;

(a) "Covered area" means the geographical area described in the solicitation from which this contract resulted.

(b) "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority.

(c) "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.

(d) "Minority" includes:

- (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
- (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
- (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands);
- (iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North American and maintaining identifiable tribal affiliations through membership and participation or community identification).

(2) Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provision of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

(3) If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participation in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

(4) The Contractor shall implement the specific affirmative action standards provided in paragraphs 7a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered areas. Covered construction Contractors performing contracts in geographical areas where they do not have Federal or Federally-assisted construction contract shall apply the minority and female goals established for the geographic area where the contract is being performed. Goals are published periodically in the Federal Register in notice form and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

(5) Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

(6) In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

(7) The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

(a) Ensure and maintain a working environment free of harassment, intimidation and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foreman, superintendents and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

(b) Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

(c) Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the Contractor may have taken.

(d) Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

(e) Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.

(f) Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

(g) Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with on-site supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed and disposition of the subject matter.

(h) Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractor's and Subcontractors with whom the Contractor does or anticipates doing business.

(i) Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students, and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

(j) Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.

(k) Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

(l) Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

(m) Ensure that seniority practices, job classifications, work assignments and other personnel practices, not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specification are being carried out.

KDHE  
KPWSLF

(n) Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

(o) Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction Contractors and suppliers, including circulation of solicitations to minority and female Contractor associations and other business associations.

(p) Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

(q) Covered construction Contractors performing contracts in geographical areas where they do not have Federal or Federally-assisted construction contract shall apply the minority and female goals established for the geographical area where the contract is being performed. Goals are published periodically in the Federal Register in notice form and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers.

(8) Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through q). The efforts of a Contractor association, joint Contractor-Union, Contractor-Community, or other similar groups of which the Contractor is a member and participant, may be assented as fulfilling any one or more of its obligations under 7a through q of these specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female work force participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to document which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligations shall not be a defense for the Contractor's noncompliance.

(9) A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goal for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

(10) The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex or national origin.

(11) The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

(12) The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

(13) The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph (g) of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

(14) The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g. mechanic, apprentice trainee, helper or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, Contractors shall not be required to maintain separate records.

(15) Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g. those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

CONTRACT PROVISIONS OF KANSAS STATE ANNOTATED  
(K.S.A.) 44-1030  
KANSAS ACT AGAINST DISCRIMINATION

Except as provided by subsection (c) of this section, every contractor for or on behalf of the State and any county or municipality or other political subdivision of the State, or any agency of or authority created by any of the foregoing, for the construction, alteration, or repair of any public building or public work or for the acquisition of materials, equipment, supplies, or services shall contain provisions by which the contractor agrees that:

1. The contractor shall observe the provisions of the Kansas Act Against Discrimination and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, physical handicap unrelated to such person's ability to engage in the particular work, national origin, or ancestry;
2. In all solicitations or advertisements for employees, the contractor shall include the phrase "equal opportunity employer" or a similar phrase to be approved by the Commission;
3. If the contractor fails to comply with the manner in which the contractor reports to the Commission in accordance with the provisions of K.S.A. 1977 Supp. 44-1031, the contractor shall be deemed to have breached the present contract and it may be cancelled, terminated, or suspended, in whole or in part, by the contracting agency;
4. If the contractor is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Commission which has become final, the contractor shall be deemed to have breached the present contract and it may be cancelled, terminated or suspended, in whole, or in part, by the contracting agency; and
5. The contractor shall include the provisions of paragraphs (1) through (4) inclusively of this subsection (a) in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

(b) The Kansas Commission on Civil Rights shall not be prevented hereby from requiring reports of contractors found to be not in compliance with the Kansas Act Against Discrimination.

(c) The provisions of this section shall not apply to a contract entered into by a contractor (1) who employs fewer than four (4) employees during the term of such contract; or (2) whose contracts with the governmental entity letting such contract cumulatively total five thousand dollars (\$5,000) or less during the fiscal year of such governmental entity. (K.S.A. 44-1030; L. 1977, ch. 183, 1; July 1)

STATE OF KANSAS  
ACT AGAINST DISCRIMINATION  
CONTRACT PROVISIONS

During the performance of this contract, the contractor agrees as follows:

1. The contractor shall observe the provisions of the Kansas Act Against Discrimination and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, physical handicap unrelated to such person's ability to engage in the particular work, national origin, or ancestry;
2. In all solicitations or advertisements for employees, the contractor shall include the phrase "equal opportunity employer" or a similar phrase to be approved by the Commission;
3. If the contractor fails to comply with the manner in which the contractor reports to the Commission in accordance with the provisions of K.S.A. 1977 Supp. 44-1031, the contractor shall be deemed to have breached the present contract and it may be cancelled, terminated, or suspended, in whole or in part, by the contracting agency;
4. If the contractor is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Commission which has become final, the contractor shall be deemed to have breached the present contract and it may be cancelled, terminated or suspended, in whole, or in part, by the contracting agency; and
5. The contractor shall include the provisions of paragraphs (1) through (4) inclusively of this subsection (a) in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

(b) The Kansas Commission on Civil Rights shall not be prevented hereby from requiring reports of contractors found to be not in compliance with the Kansas Act Against Discrimination.

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PROJECT/CONTRACT NAME AND NO.

MUNICIPALITY \_\_\_\_\_

CONTRACTOR'S  
SIGNATURE \_\_\_\_\_

TITLE \_\_\_\_\_

KPWSLF NO. \_\_\_\_\_

DATE \_\_\_\_\_



KPWSLF PROJECT NO.:

Date:

Subject: Bid Documents for Review and Approval

From:

To: Public Water Supply Section, Bureau of Water, KDHE

The following documents are enclosed for review and approval prior to awarding of the contract(s):

- \_\_\_\_\_ Proof of advertising <sup>1</sup>
- \_\_\_\_\_ Tabulation of bids
- \_\_\_\_\_ Low bid and/or proposal recipient wishes to accept
- \_\_\_\_\_ Recipient recommendation of award
- \_\_\_\_\_ Any addenda not previously submitted and bidder acknowledgment of all addenda
- \_\_\_\_\_ Bid bond <sup>1</sup>
- \_\_\_\_\_ Certification of Non-Segregated Facilities <sup>1,2</sup>
- \_\_\_\_\_ Low Bidder(s) Suspension/Debarment Certification
- \_\_\_\_\_ Minority and Women's Business Enterprise Utilization Worksheet(s), for bid(s) recipient wishes to accept <sup>1,2</sup>
- \_\_\_\_\_ Small Business Enterprise Utilization Worksheet(s), for bid(s) recipient wishes to accept <sup>1,2</sup>
- \_\_\_\_\_ Recipient's assurance that proposed contractor(s) positive efforts and/or MBE/WBE (DBE) utilization have been reviewed, are satisfactory and meet regulatory requirements
- \_\_\_\_\_ Recipient's assurance that proposed contractor(s) positive efforts and/or Small Business utilization have been reviewed, are satisfactory and meet regulatory requirements
- \_\_\_\_\_ State of Kansas Act Against Discrimination Contract Provisions signature form
- \_\_\_\_\_ One set of as-bid plans and specifications, if not previously submitted
- \_\_\_\_\_ Site certification and description, if not previously submitted <sup>1,2</sup>

The proposal(s) expire \_\_\_\_\_.  
Date

For additional information contact:

Name:  
Address:  
Phone No.

\_\_\_\_\_  
Signature of Authorized Representative

<sup>1</sup> Not applicable for small purchases

<sup>2</sup> Not applicable for equipment purchases

**CERTIFICATE AS TO TITLE TO PROJECT SITE**

Project No. \_\_\_\_\_

I \_\_\_\_\_, Attorney at Law  
representing the \_\_\_\_\_, as title counsel,  
do hereby certify:

1. That I have investigated and ascertained the location of, and am familiar with the legal description of the site or sites being provided by the Applicant for all elements (including intakes, pumping facilities, distribution lines, storage facilities, treatment plants, and appurtenances) of Project No. \_\_\_\_\_, to be constructed and maintained in and upon such site or sites.

2. That, if not previously submitted, I am attaching a legal description to the site or sites on which the treatment facility is to be constructed. (Descriptions of rights of way and easements for water lines are not required, but such rights of way and easements are covered by this title opinion.)

3. That I have examined the deed records of the county or counties in which such project is to be located and, in my opinion, the applicant has a legal and valid fee simple title to the site of the project, including necessary easements and rights of way; or such other interest, less than fee simple and fully described below, including terms as to duration or termination, sufficient to assure undisturbed use and possession for the purpose of construction and operation of the project; and in the case of projects serving more than one municipality, that the participating communities have such interest or rights sufficient to assure their undisturbed utilization or the project.

4. That if initiation of negotiations for acquisition of site and/or easements occurred after April 1, 1989, said acquisition was conducted in compliance with 40 CFR Part 4 dated March 2, 1989; including that:

(Place a check mark on the line beside as many of the following statements as are appropriate. At least one statement must be checked; it is possible that all three statements could be applicable. You must be able to certify A. if the statements in B. and/or C. do not apply to all acquisitions for the project.)

\_\_\_\_\_ A. Property was appraised by a qualified appraiser in accordance with nationally recognized appraisal standards; review appraisal was conducted, also by a qualified individual; and both were performed prior to initiation of negotiations;

\_\_\_\_\_ B. Certain parcels and /or easements were donated; and the donor, after being fully informed of their rights under the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, waived their right to appraisal; and said

waivers are on file with the municipality;

\_\_\_\_\_ C. Certain parcels and/or easements were, based on a review of available data, determined to have a fair market value of \$2,500 or less; and therefore no appraisals were conducted for those properties.

5. That any deeds or documents required to be recorded in order to protect the title of the owner and the interest of the applicant have been duly recorded wherever necessary.

6. Remarks:

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
Attorney at Law

\_\_\_\_\_  
Address

\_\_\_\_\_  
City and State

APPLICANT ASSURANCE WITH RESPECT TO ACQUISITION  
OF REAL PROPERTY INCLUDING EASEMENTS

FOR KANSAS PUBLIC WATER SUPPLY  
LOAN FUND PROJECTS

Please check the appropriate space(s) and provide any appropriate explanation.

I hereby certify that with reference to KPWSLF Project Number \_\_\_\_\_:

\_\_\_\_\_ All necessary real property has been acquired and Certificate as to Title to  
Project Site is attached.

\_\_\_\_\_ Bonafide options have been taken on all necessary real property.

\_\_\_\_\_ Formal condemnation proceedings have been initiated for necessary real  
property.

\_\_\_\_\_  
Authorized Representative of Applicant

\_\_\_\_\_  
Date

\_\_\_\_\_  
Legal Name of Applicant